

**Upper Tribunal
(Immigration and
Asylum Chamber)**

IA/07003/2015



Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 29 April 2016**

**Decision Promulgated
On 12 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**MOHAMMED MEHDI HASAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Chowdhury, of Liberty Legal Solicitors

For the Respondent: Mr Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Miles, promulgated on 29 September 2015, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on 5 January 1981 and is a national of Bangladesh.
4. On 18 June 2014 the Appellant applied for leave to remain in the UK as a student. On 4 February 2015 the Secretary of State refused the Appellant's application.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Miles ("the Judge") dismissed the appeal against the Respondent's decision.
6. Grounds of appeal were lodged and on 4 April 2016 Judge Kelly gave permission to appeal stating inter alia

"4. Permission to appeal on the first two grounds is therefore refused.

5. However, it is correct (as is contended in the third ground of the application) that the Tribunal failed to consider whether the appellant's removal would be in breach of his rights under Article 8 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms. This is despite the fact that it was raised as a ground in the notice of Appeal. Moreover, it is just arguable that this failure was material to the outcome of the appeal having regard to the decision in Nasim & Others (Article 8) [2014] UKUT 00025 (IAC). Permission to appeal on this ground is therefore granted."

The Hearing

7. Mr Chowdhury, for the appellant, moved the grounds of appeal and told me that this appeal is in clear and narrow focus. He told me that the Judge had simply failed to take account of article 8 ECHR, even though those grounds of appeal were specifically raised in the notice of appeal. Mr Chowdhury told me that it was he who appeared before the first Tier and that he personally made submissions on article 8 ECHR grounds to the Judge. He relied on the cases of CDS (PBS: "available": Article 8) Brazil [2010] UKUT 00305 (IAC) and Nasim and others (Article 8) [2014] UKUT 25 (IAC), and urged me to set the decision aside. He asked me to remake the decision allowing the appeal on article 8 ECHR grounds.

8. Mr Bramble, for the respondent adopted the terms of the rule 24 response. He accepted that the Judge has not given consideration to article 8 ECHR, but argued that the appellant could not have succeeded on article 8 ECHR grounds so that, in so far as that omission may be an error, it is not a material error of law. He relied on the case of Patel and Others v Secretary of State for the Home Department [2013] UKSC 72, and the case of AM (S 117B) Malawi [2015] UKUT 0260 (IAC). He reminded me that section 117B of the 2002 Act must be considered, and argued that, if the appellant has established private life UK, little weight can be given to that private life because at all times his immigration status has been precarious. He told me that the outcome of appeal would have been exactly the same if the Judge had given consideration to article 8 ECHR grounds, and urged me to dismiss the appeal.

Analysis

9. It is clear from the decision that the Judge considered this appeal under the immigration rules and also considered the question of common-law procedural fairness. The Judge dismissed the appeal on both grounds. Permission to appeal the decision on those two grounds was refused on 4 April 2016. The Judges findings of fact and conclusions in relation to both the immigration rules and common-law procedural fairness stand.

10. There were two grounds of appeal to the First-tier. The first was fairness. The second was "*continuous study and article 8 of the ECHR*". Mr Chowdhury told me that he addressed the Judge fully on article 8 ECHR grounds. It is clear from the decision that no consideration has been given at all to the article 8 ECHR grounds argued. That is clearly an error of law. I find this is a material error of law because a competent ground of appeal has not been considered. I consider that this is a material error of law because no determination has been given on the crucial part of the appellant's appeal; the Judge's decision is, therefore, incomplete.

11. I am invited by Mr Chowdhury to substitute my own decision on the basis of the evidence placed before me. There is no challenge to the Judge's fact finding exercise, nor is any appeal competently directed against the decision made by the Judge in relation to the immigration rules and procedural fairness. The Judge's decision to dismiss the appeal on those two grounds stands. I find that I am able to consider separately the remaining appeal on article 8 ECHR grounds.

Findings of Fact

12. The appellant entered the UK on 23rd of April 2007, having been granted leave to enter as a student on 14 April 2007. The respondent then granted the appellant further leave to remain as a post study work migrant on 8 July 2009. That leave was valid until 8 July 2011.

13. The appellant then switched to Tier 4 (general) category, and on 26 August 2011 was granted leave to remain until 26 November 2014. The appellant's Tier 4 sponsor's licence was revoked, so the appellant applied for further leave to remain in the same category in April 2013. The respondent granted leave to remain until 19 June 2014.

14. The appellant submitted an application for leave to remain as a student on 18 June 2014. That application was not supported by a valid CAS. The appellant's (then) representatives submitted the application explaining that the appellant had received a conditional offer to study on a ACCA course at Blake Hall College, and that a valid CAS would be submitted as soon as it became available.

15. On 7 July 2014 the appellant's representative's submitted a CAS from a different college to pursue a different course of study. On 4 February 2015 the respondent refused the appellant's application.

16. In September 2008, the appellant was awarded a postgraduate certificate in business Management from Oxford business college. The appellant successfully completed a level 7 diploma in health care management in June 2014.

Article 8 ECHR

17. The principle difficulty for the appellant is the paucity of information provided. The appellant does not produce a witness statement and has not provided oral evidence - neither to the First-tier nor to the Upper Tier. [5] & [6] of the decision make it clear that the Judge only had before him the documents submitted with the notice of appeal, together with additional documents produced during the course of submissions.

18. At paragraphs 12 and 13 of the grounds of appeal to the First-tier, the appellant's article 8 ECHR argument is set out. In the second sentence of paragraph 12 of the grounds of appeal, his position is summarised as follows.

"The appellant has been living in the UK since April 2007 and by this time he has established his private life through his education, work and integration with the society"

That submission was repeated at paragraph 26 of the grounds of appeal to the Upper Tribunal.

19. Even after considering each strand of evidence in this case, I still know very little about the appellant's life in the UK. There is no evidence before me, nor was there evidence before the First-tier, of the appellant's hobbies and interests, nor of significant friendships that the appellant has developed. There is no evidence of contribution to, or integration into, UK society. There is no evidence addressing just how the appellant passes this time in the UK. There is inadequate evidence of the component parts of private life within the meaning of article 8 of the 1950 convention.

20. This appeal, in reality, is argued on the basis that the appellant has been in the UK for nine years (now), and between 2014 and 2016 wanted to pursue a course of study. In his Submissions, Mr Chowdhury focused on the interruption of studies as a breach of the right to respect for private life, and relied on the cases of CDS (Brazil) & Nasim.

21. In Nasim and others (Article 8) [2014] UKUT 25 (IAC) it was held that the judgments of the Supreme Court in Patel and Others v Secretary of State for the Home Department [2013] UKSC 72 serve to re-focus attention on the nature and purpose of Article 8 of the ECHR and, in particular, to recognise that Article's limited utility in private life cases that are far removed from the protection of an individual's moral and physical integrity. In Nasim and others (Article 8) [2014] UKUT 25 (IAC) it was stated "*it is important to emphasise that the appellant in CDS (Brazil) was faced with a hypothetical removal, which would have prevented her from completing the course of study for which she had been given leave*". Whilst not finding that CDS was no longer good law, it was clear that the tribunal considered that in the light of Patel and Others v

Secretary of State for the Home Department [2013] UKSC 72 its application was probably very limited.

22. In Patel and others v Secretary of State for the Home Department [2013] UKSC 72 Carnwath LJ said "*One may sympathise with Sedley LJ's call in Pankina for "common sense" in the application of the rules to graduates who have been studying in the UK for some years (see para 47 above). However, such considerations do not by themselves provide grounds of appeal under article 8, which is concerned with private or family life, not education as such. The opportunity for a promising student to complete his course in this country, however desirable in general terms, is not in itself a right protected under article 8*".

23. The appellant, despite having two opportunities to provide evidence, has not provided adequate evidence of an established private life in the UK. The appellant relies on a simple argument that as he is (or intends to be) a student, then he falls into a special category which automatically engages article 8 ECHR. That argument has no sound basis in law. The appellant's argument relies almost entirely on CDS (Brazil). That decision must be read in light of Nasim and others (Article 8) [2014] UKUT 25 (IAC) and Patel and Others v Secretary of State for the Home Department [2013] UKSC 72.

24. The respondent's decision does not interrupt a course of study. It might prevent the appellant from embarking on a course of study, but that is entirely different. The decision frustrates the appellant's hopes, but does not snatch away an established pattern of study, nor does it deprive the appellant of a qualification he has invested in and worked towards since entering the UK in 2007. The argument presented for the appellant is not supported by the evidence placed before me, nor is it sustainable in light of the case-law set out above.

Decision

25. The decision of the First-tier tribunal is tainted by a material error of law. I set the decision aside.

26. I substitute the following decision;

27. The appeal is dismissed under the Immigration Rules,

28. The appeal is dismissed on Common law fairness principles,

29. The appeal is dismissed on article 8 ECHR grounds.

Signed

Date 4 May 2016

Deputy Upper Tribunal Judge Doyle