



Upper Tribunal
(Immigration And Asylum Chamber)

Appeal Number: IA/48995/2014
IA/49634/2014

THE IMMIGRATION ACTS

Heard at: Field House on
On 22 December 2015

Promulgated

Decision & Reasons

On 18 January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MR MIR JAKARIA HOSSAIN
MRS DUAL NAHER CHOWDHURY
(NO ANONYMITY DIRECTIONS MADE)

and

Appellants

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellants: No representative
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are nationals of Bangladesh, born on 17 August 1982 and 11 August 1985 respectively. They appealed to the First-tier Tribunal against the decision of the respondent refusing their applications for leave to remain in the UK as a Tier 4 (General) Student and dependant pursuant to the Immigration Rules.
2. Their appeals were dismissed on 22 April 2015 by First-tier Tribunal Judge Laws following separate decisions on a preliminary issue. He found that the appellants

had failed to comply with legitimate requests for grounds of appeal. The respective notices of appeal did not contain the grounds of appeal and a request was sent to them for the proper documents to be prepared and served by 22 January 2015. They had failed to comply with that request and accordingly the Judge dismissed their appeals.

3. On 10 September 2015, Upper Tribunal Judge McWilliam granted the appellants permission to appeal. She noted that the grounds for permission asserted that the appellants did not receive the notices sent by the Tribunal to their address directing them to supply grounds by 22 January 2015. It was also asserted that the grounds of appeal had been submitted by the appellants with the original notices of appeal. She considered the IAFT-1 forms completed by the appellants and found it to be arguable from page 11 of the form that they had advanced grounds of appeal.
4. Notices of the hearing before the Upper Tribunal, in which the date, time and place were set out, were sent to the appellants at their address on record as well as to their former solicitors, Liberty Legal Solicitors.
5. On 22 December 2015, Liberty Legal Solicitors informed the Tribunal in a written fax relating to the appellants, that they are no longer instructed on their behalf. They were also informed that Mr Hossain would be instructing another legal representative in this matter. Liberty Legal Solicitors were therefore no longer instructed in this matter.
6. The appeal was stood down until the afternoon on 22 December 2015. However, neither appellant attended the hearing. Nor did any other representative attend or inform the Tribunal that they had been instructed to represent them.
7. In the circumstances, I am satisfied that the appellants have been informed of the hearing. I consider that it is in the interests of justice to proceed with the hearing in their absence.
8. I shall refer to Mr Hossain, the principal appellant, as "the appellant". He applied on 30 April 2014 for leave to remain in the UK as a Tier 4 (General) Student Migrant under the points based system. The respondent did not award him any points under Appendix A of the rules. For applications made after 22 February 2010, it was mandatory that applications as a Tier 4 (General) Student be accompanied by a Confirmation of Acceptance for Studies (CAS). The appellant provided no evidence to establish that he had been assigned such a CAS and no valid CAS had been found.
9. Accordingly he had not met the requirements and no points were awarded for his CAS.
10. The second appellant's application was refused in line with her husband's.

11. The grounds of appeal to the First-tier Tribunal asserted that the decision was not in accordance with the rules; that it was not otherwise in accordance with the law and that discretion under the rules should have been exercised differently. It was also contended that their removal from the UK would be incompatible with their rights under Article 8 of the Human Rights Convention.
12. The appellants were issued one-stop warnings, requiring them to inform the respondent of any reasons why they think they should be allowed to stay in the UK. However, no statement of additional grounds has been filed.
13. No removal directions have been served on the appellants. They were given a right of appeal and informed that if the appeal is unsuccessful, they must leave the UK immediately. If they did not leave the UK voluntarily, they would be removed.
14. As noted, Judge Law found as a preliminary issue, that they had failed to comply with directions and he dismissed their appeals without a hearing under the provisions of Rule 25(1)(e) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.
15. Apart from the assertions in their grounds of appeal to the First-tier Tribunal, no further evidence or submissions were made by either appellant.
16. In his grounds of appeal to the Upper Tribunal, the appellant accepted that in his application to extend his leave under Tier 4, he failed to provide the CAS in time. He contends that the respondent should have given him time to provide his CAS before refusing his application. In the circumstances, there was unfairness to the appellant.
17. I have had regard to the Court of Appeal decision in Kaur v SSHD [2015] EWCA Civ 13 at [42]. Lord Justice Burnett concluded that earlier decisions, namely Rahman v SSHD [2014] EWCA Civ 11 and EK (Ivory Coast) v SSHD [2014] EWCA Civ 1517 are binding authority on the question as to whether the secretary of state should, as a matter of fairness, give notice to an applicant for leave to remain or the Tier 4 sponsor that she considers there to be a deficiency in the CAS before making an adverse decision on that basis. There is no such obligation. The other two judges concurred with his decision.
18. In any event, there has been no contention that there was a deficiency in the CAS that was provided to the respondent. There was simply no CAS that was provided, this the appellants accept.
19. It is a requirement under the rules that a valid CAS must be provided at the date of application.
20. In the circumstances, the appellant was not entitled to succeed under paragraph 245ZX(c) with reference to paragraph 115A of Appendix A and paragraph 245ZX(d)

of the Immigration Rules. His wife's application was refused in line with her husband's.

21. The grounds of appeal submitted with the notice of appeal to the First-tier Tribunal contended that their removal from the UK as a result of the decision would be incompatible with their rights under Article 8 of the Human Rights Convention.
22. In paragraph 16 of the grounds for permission to appeal to the Upper Tribunal, it is simply asserted that the appellant is a genuine student who has been studying diligently. It is asserted that the respondent failed to consider his Article 8 "engagement" that he accrued through his residence in the UK. He also stated at paragraph 16 that he has lived here since 2010 and has established his private life through his education and integration with society. This is repeated at paragraph 21. There is also reference to various Tribunal decisions including CDS v SSHD and Izuazu (Article 8 – new rules) [2013] UKUT 00045 (IAC) and it is asserted at paragraph 24 that the respondent failed to apply conventional jurisprudence.
23. However, no further evidence, statement or document has been produced in support of these contentions. Apart from stating that he has been living here since 2010 and that he has established private life through his education and integration with the society, no further evidence has been produced. There are no specific assertions made in respect of the second appellant.
24. I have had regard to the decision of the Supreme Court in Patel and others v SSHD [2013] UKSC 72. That served to re-focus attention on the nature and purpose of Article 8 of the Human Rights Convention and, in particular, to recognise the Article's limited utility in private life cases that are far removed from the protection of an individual's moral and physical integrity.
25. The Tribunal in Nasim and others (Article 8) [2014] UKUT 00025 found that Patel and others was a significant exhortation from the Supreme Court to re-focus attention on the nature and purpose of Article 8 and, in particular, to recognise its limited utility to an individual where one has moved along the continuum, from that article's core area of operation towards what might be described as its fuzzy penumbra. The limitation arises, both from what will at that point normally be the tangential effect on the individual of the proposed interference and from the fact that, unless there are particular reasons to reduce the public interest of enforcing immigration controls, the interest will consequently prevail in striking the proportionality balance, even assuming that the stage is reached – at [20]. The use of Article 8 has very limited use for private life cases which did not interfere with a person's moral and physical integrity.
26. In Nasim, supra, it was noted that the Tribunal in CDS (PBS: "available" : Article 8) Brazil [2010] UKUT 00305 (IAC) expressly acknowledged that it was unlikely that a person would be able to show an Article 8 right by coming to the UK for temporary purposes. The chances of such a right carrying the day have, the Tribunal in Nasim considered, further diminished, in the light of the judgement in Patel.

27. In CDS, the Tribunal noted that a person who was admitted to follow a course that has not yet ended may build up a private life that deserves respect, so that the public interest in removal before the end of the course may be reduced where there are ample financial resources available.
28. In this case, the appellant has simply asserted that he has been studying diligently and that he has established his private life through his education and integration with the society. No evidence has been given by either appellant of any relationships developed, unique or otherwise, after coming to the UK in 2010.
29. The circumstances relating to the appellants do not meet the threshold set by Nasim. The interference would not interfere with their moral and physical integrity and would not be disproportionate. Grounds outside the rules are reserved for the most exceptional cases and should not be used as a means to circumvent the requirements under the rules which are in themselves a complete code.
30. Having regard to the circumstances as a whole, I find that the asserted interference with their Article 8 rights is not disproportionate to the legitimate public end relating to the maintenance of a coherent and fair system of immigration control.
31. I accordingly find that the decision of the First-tier Tribunal did not involve the making of any material error of law.

Notice of Decision

The appeals are dismissed. No anonymity directions are made.

Deputy Upper Tribunal Judge Mailer Dated 15 January 2016