



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

Appeal Number: IA/26660/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 4 October 2017**

**Decision & Reasons Promulgated
On 26 October 2017**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

MD SHAHALAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Gaffar, Counsel instructed by J S Solicitors

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by a citizen of Bangladesh against a decision of the First-tier Tribunal dismissing his appeal against the decision of the Secretary of State refusing him further leave to remain as a student.
2. Permission was granted on one ground and it was conceded by Mr Wilding that the appeal on that ground had to succeed. The First-tier Tribunal neglected to determine the appeal brought on human rights grounds with relation to Article 8 of the European Convention on Human Rights, even though it was clearly the appellant's case that he was entitled to remain on that basis.
3. Mr Gaffar invited me to find an error of law and remit the case to the First-tier Tribunal. However, the appellant had not served any additional evidence and the evidence before me seemed brief and uncontroversial. I saw no point in a further hearing and I directed that Mr Gaffar should proceed to argue his case.

Mr Gaffar did not call any evidence. There would have been no point in calling evidence. The disclosed evidence was uncontroversial.

4. However, it is right to say that the appellant did not say very much about his human rights claim.
5. I have considered his statement dated 17 November 2016. There he explains that he applied for further leave to remain on 8 August 2014 as a Tier 4 (General) Student under the points-based system and the application was refused on 7 July 2015. The application was refused because, in the opinion of the Secretary of State, the appellant had supported an earlier application with a certificate of competence in the English language obtained improperly.
6. Although this is not reflected in the appellant's statement the application was also refused because the appellant had not provided a necessary Confirmation of Acceptance for Studies (CAS) in support of the application that was refused. In ground 4 of the grounds of appeal to the First-tier Tribunal the appellant contends that

“there were exceptional circumstances for which he was unable to provide a CAS. The Appellant applied to different sponsors but sponsors have refused to issue a CAS.”
7. The appellant's representatives had made it clear as long ago as 27 August 2014 in a letter from Apex Law Associates to the Secretary of State that, after receiving a curtailment notice curtailing his leave on 9 August 2014, the appellant had applied to different sponsors but they had refused to issue a CAS.
8. I have also seen the First-tier Tribunal's Record of Proceedings and it is plain that little or nothing was said to the judge in evidence about his Article 8 claim.
9. Putting these things together and doing the best I can I find it reasonably likely that the appellant was not able to obtain a CAS because he could not produce a language certificate because his result had been cancelled. However it has now been shown that the respondent was unable to show that the appellant was a cheat, as she alleged.
10. The difficulty I have is factoring this into an Article 8 balancing exercise. I remind myself of the five tests in **Razgar**. I accept that there is a “private and family life” established in the United Kingdom, although the only relevant factors are part of “private life”. Removing the appellant will interfere but the interference is lawful. I have to ask myself if it is proportionate given that one of the reasons for the appellant not being able to satisfy the Rules lay in his existing leave being curtailed because of the understandable but mistaken belief that he had obtained a test result fraudulently. I do not know if it would have made any difference if the Secretary of State had acted in bad faith, but that was not suggested and would be impossible to sustain here.
11. The appellant wishes to continue studying in the United Kingdom and he says he has passed nine of his necessary fourteen examinations to achieve his ACCA. He has not explained why he cannot carry forward his exams already passed and continue his studies outside the United Kingdom, although it is perfectly clear that is not his wish. In short he would like to remain in the United Kingdom and the reason he cannot remain in the United Kingdom stems

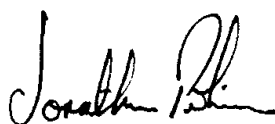
from his losing his leave. This does not make refusal to renew leave disproportionate. The Rules require him to have a certificate of acceptance and he does not. The decision to curtail the leave has not been challenged. The appellant has not explained what would be disproportionate in leaving the United Kingdom and then returning to continue his studies having made a proper application. I do not accept, in the absence of specific evidence, that the costs involved in returning to Bangladesh and from there back to the United Kingdom are inordinate.

12. I do not accept that the decision complained of is a disproportionate interference with his right to a private and family life in the United Kingdom. Rather than being disproportionate it seems to me a wholly predictable consequence. The appellant may have been unlucky, but that does not give him a human right to remain outside the Rules.

Notice of Decision

13. In short, although the First-tier Tribunal erred in law by not considering a ground of appeal, it is an error I can correct by considering the facts and submissions before me and for the reasons given above, although I allow the appeal to the extent that something needs to be corrected, my final decision is to dismiss the appeal against the Secretary of State's decision.

Signed



Jonathan Perkins, Upper Tribunal Judge

Dated: 25 October 2017