



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/01829/2016

THE IMMIGRATION ACTS

Heard at Field House
On 29 June 2018

Decision and Reasons Promulgated
On 27 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR SYED KASHIF RAZA
(anonymity direction not made)

Appellant

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr. N. Bramble, Senior Home Office Presenting
Officer

DECISION AND REASONS

1. The Appellant is a national of Pakistan, born on 26 October 1990. He arrived in the United Kingdom on 9 May 2011 with entry clearance as a Tier 4 student, which was subsequently extended until 14 August 2014. He made an

time application to extend his leave, which was refused in a decision dated 24 March 2016, on the basis that no CAS had been assigned to him.

2. The Appellant appealed against this decision and his appeal came before First tier Tribunal Judge Bennett for hearing on 25 August 2017. The Judge noted at [6] that notice of hearing had been sent to the Appellant but the notice had been returned by the Post Office on the basis that the Appellant was not known at that address. The Judge then proceeded with the appeal on the basis that it was in the interests of justice to determine the appeal in the absence of the appellant [9] bearing in mind he had not provided a CAS and so was unable to meet the requirements of Appendix A of paragraph 245ZX of the Rules.

3. In a decision and reasons promulgated on 6 September 2017, the Judge dismissed the appeal. Permission to appeal was sought, out of time, on the basis that the Judge erred in proceeding with the appeal, given that the notice of hearing had been sent to the wrong address.

4. In a decision dated 3 May 2018, First tier Tribunal Judge Lambert granted permission to appeal and time was extended to admit the application out of time, on the basis that service of the decision and reasons had been to the wrong address.

Hearing

5. At the hearing before me, there was no appearance by or on behalf of the Appellant. His solicitors sent a letter dated 12 June 2018 asking for the appeal to be considered on the papers.

6. Given that the appeal had been listed for hearing, albeit the Appellant's solicitors had requested a decision on the papers, I heard submissions from Mr Bramble. He submitted that there had been a procedural error regarding the Appellant's address and notification of the hearing date, however this was not material as the Judge had documents giving sufficient details to determine the appeal. The Judge at [8] found it was a "new style" appeal but it was open to him to consider whether the decision was not in accordance with the Rules, due to the dates of application and decision.

7. He submitted that the Judge went on to consider the issue of the CAS at [16] and found he did not qualify under the Rules. He did consider the case under Article 8 and this is not challenged in the grounds of appeal. With regards to Article 8, there was nothing new, in that, although there was a bundle from the Appellant's solicitors, there is nothing in there concerning article 8. Thus, he submitted, there is no point in sending the appeal back to the First tier Tribunal. The Appellant through his solicitors requested that the appeal be decided on the papers and neither the Appellant nor his solicitors

attended the hearing today before the Upper Tribunal, although they were clearly on notice of it.

Findings

8. I have concluded that the decision of the First tier Tribunal should be set aside on the basis that it was procedurally unfair as the Appellant did not receive the notice of hearing because, due to administrative error, it was sent to the wrong address. I have reached this conclusion reluctantly because the standard directions which were sent to the parties on 14 May 2018 provide at [4] that *“there is a presumption that, in the event of the Tribunal deciding that the decision of the FtT is to be set aside as erroneous in law, the re-making of the decision will take place at the same hearing.”* Despite the fact that there is no reason why the Appellant and his solicitors should not have received these directions, the Upper Tribunal was requested to consider the appeal on the papers.

9. However, I have borne in mind the revised Practice Statements in respect of this chamber of the Tribunal, which provides:

“7. Disposal of appeals in Upper Tribunal

7.1. Where under section 12(1) of the 2007 Act (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of the decision concerned involved the making of an error on a point of law, the Upper Tribunal may set aside the decision and, if it does so, must either remit the case to the First-tier Tribunal under section 12(2)(b)(i) or proceed (in accordance with relevant Practice Directions) to re- make the decision under section 12(2)(b)(ii).

7.2. The Upper Tribunal is likely on each such occasion to proceed to remake the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party’s case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal. “

10. I find that the effect of the error has been to deprive the Appellant of a fair hearing in the First tier Tribunal. I make this finding not only in light of the fact that neither the Appellant nor any representative attended the hearing on 25 August 2017, because the notice of hearing was sent to the wrong address, but also because there was no Respondent’s bundle before the Judge. It is thus unclear what documents were before him when he reached his findings and he did not have the benefit of evidence from the Appellant on key issues in

the appeal *viz* steps he took to obtain a CAS between August 2014 and 24 March 2016 or to take an English language test and the extent of any private life he may have developed in the United Kingdom since his arrival on 9 May 2011.

11. Consequently, I set aside the decision of First tier Tribunal Judge Bennett and remit the appeal for a hearing *de novo* before the First tier Tribunal. The Appellant's presence will be required at that hearing in order to assist the fair determination of the issues set out at [10] above and if he chooses not to attend it is likely that his appeal will be determined in a summary fashion.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

dated 20 July 2018