



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

Appeal Number: IA/41127/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 5th June 2014**

**Determination Promulgated
On 6th June 2014**

Before

UPPER TRIBUNAL JUDGE COKER

Between

MD ASLAM SARKAR

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: no appearance either in person or by legal representative
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals a decision of the First-tier Tribunal which dismissed his appeal against a decision by the respondent to refuse to vary his leave to remain as a Tier 4 (General student) migrant and to remove him in accordance with s47 Immigration Asylum and Nationality Act 2006. It was acknowledged and agreed by the parties before the First-tier Tribunal that the appellant did not meet the requirements of the Rules and thus the appeal was dismissed under the Rules.
2. The appellant however seeks to appeal that decision on the grounds that the First-tier Tribunal judge failed to deal with all the grounds before him, in

particular that the decision to refuse to vary his leave was a breach of Article 8. Permission to appeal was granted on the grounds that it was clear in the grounds submitted in support of the appeal at first instance that the appellant relied upon Article 8.

3. It is plain that the First-tier Tribunal judge has not considered and determined the appeal on human rights grounds and there is thus an error of law. The issue however is whether such error is such as to set aside the determination for it to be remade on that ground.
4. The appellant was legally represented before the First-tier Tribunal. The arguments submitted in his notice of appeal was that the "*SSHD must exercise her discretion in favour of the appellant as the only ground of refusal is that the bank statements are not from a listed bankthe appellant is a genuine student with real ambition to complete his degree.*" The appellant also stated that he was not aware of the existence of an approved list of banks but, as is clear from the Rules there is and the appellant did not meet those requirements.
5. No skeleton argument was submitted by the appellant and there was no witness statement or other documentary evidence submitted. There is nothing on the face of the documentary evidence before me that the appellant raised any matters other than were set out in the grounds of appeal.
6. The appellant whose date of birth is 1st January 1993, appears to have arrived in the UK on around 14th May 2011 pursuant to a Tier 4 (general student) migrant entry clearance issued on 27th April 2011 which operated as leave to enter until 24th August 2013. He sought to vary his leave to remain to undertake a further course commencing on 2nd September 2013 and expiring on 6th September 2014.
7. There was nothing in the papers before the First-tier Tribunal judge and the appellant did not seek to rely on anything other than was submitted with his application for a variation. There was nothing before the judge that would remotely indicate that the appellant had any basis on which to stay in the UK other than a desire to remain and complete his education. The provisions for enabling such is set out in the Immigration Rules. The failure to comply with the Rules for no expressed good reason combined with a desire to continue with studies and having come relatively recently to the UK on a temporary visa for such study purposes does not even begin to approach reasons for considering that the refusal to vary leave to remain and subsequent removal is disproportionate.
8. Although the judge erred in failing to specifically consider Article 8 and reach a decision, the evidence before him could only have resulted in one outcome namely that removal was not disproportionate to the legitimate aim of the respondent; there was no breach of Article 8.
9. There is no error of law such that the decision is to be set aside to be remade. The appeal is dismissed.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision is to be set aside.

I do not set aside the decision

The appeal is dismissed.

Date 5th June 2014.

Judge of the Upper Tribunal Coker