Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/14487/2014**

THE IMMIGRATION ACTS

Heard at Field House
On 3rd June 2015

Decision and Reasons Promulgated
On 12th June 2015

Before

UPPER TRIBUNAL JUDGE McWILLIAM
DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

MR PRIOM ROY
(Anonymity Direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Hussain, SEB Solicitors
For the Respondent: Mr Nath, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. We 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 we do not consider it necessary to make an anonymity direction.

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2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Russell ("the judge") promulgated on 13 November 2014, dismissing the appellant's appeal.

Background

3. The appellant was born on 27 June 1987 and is a national of Bangladesh. The appellant came to the UK to study on 24 March 2011. He made an application on 20 June 2013 to vary his leave as a Tier 4 (General) student to study at Bell's College. The last date to enrol on the course was 25 June 2013 (five days after the application). His application was granted on 17 December 2013 with an expiry date of 25 September 2014. On 23 January 2014 the Home Office were informed that the appellant had not commenced studies at Bell's college. On 12 March 2014 the Secretary of State for the Home Department made a decision to curtail the appellant's leave to remain as a tier 4 (General) student under paragraph 323A(a)(ii)(1) of the Immigration Rules HC395 (as amended). The reason set out in the decision letter is that the appellant failed to commence studying with the Tier 4 sponsor.

The Fist tier Tribunal Judge's Decision

4. The appellant appealed against the respondent's decision to curtail his leave to the First-tier Tribunal. Following a hearing on 29 October 2014 the judge dismissed the appeal against the respondent's decision. The appellant's grounds of appeal before the First-tier Tribunal were that the decision was unfair and breached Article 8 of the 1950 Convention on Human Rights ('ECHR'). The judge found that the Home Secretary's decision was in accordance with the law and the immigration rules.

5. The Appellant applied for permission to appeal against the decision of the judge on essentially two main grounds of appeal; firstly, that the judge had failed to consider and assess properly whether the respondent had acted fairly and secondly, that the judge failed to consider, when determining the appeal, the ground of appeal advanced that curtailment of the appellant's leave infringed rights protected by Article 8 of the ECHR.

6. The application for permission to appeal against that decision was refused by the First Tier Tribunal and a renewed application was made to the Upper Tribunal. Permission was granted by the Upper Tribunal on a limited basis. Permission has been granted only in respect of the second ground of appeal; namely that the judge failed to consider the claim that the appellant's rights protected by Article 8 of the ECHR would be infringed by curtailment of his leave.

Submissions

7. A skeleton argument was submitted by Mr Hussain on the day of the hearing. Most of the skeleton argument covered the first ground of appeal. We indicated to Mr Hussain that we were only prepared to hear submissions and take into account

arguments raised with regard to the second ground of appeal, the Article 8 claim, as permission had been specifically limited to that ground of appeal. We referred to the very limited particulars in the papers before us with regard to the Article 8 private life claim. Mr Hussain was invited to expand upon the submissions set out in his skeleton argument and on the particulars of private life relied on.

8. Mr Hussain, on behalf of the appellant, submitted that the judge had erred in law primarily because the judge had failed to consider the Article 8 claim as required. The judge did not determine this ground of appeal. Mr Hussain submitted that the judge should have considered the arguments on the unfairness issue in the round with an examination and cross examination of the witness at the hearing with regards to the Article 8 claim. It was an error of law to fail to consider the ground (s86 (2)).

9. On behalf of the respondent Mr Nath submitted that nothing further had been submitted to show why the appellant meets the threshold for an Article 8 claim. He submitted that in light of the cases *of Nasim and others* (Article 8) [2014] UKUT 00025 (IAC) (*'Nasim'*) and *Patel and Others v Secretary of State for the Home Department* [2013] UKSC 72 *('Patel')* the appellant could not meet the requirements for an Article 8 claim. Mr Nath also relied on the Rule 24 response.

10. In reply Mr Hussain submitted that the success or otherwise of the Article 8 claim would depend on the findings of the judge in relation to the fairness issue. He submitted that there was a clear error of law.

<u>Error of Law</u>

11. Having heard the submissions and after considering the grounds of appeal and skeleton argument we reached the conclusion that the Tribunal has made an error of law. The judge has simply not engaged with, or considered, the claim under Article 8. Section 86(2) of the Nationality, Immigration and Asylum Act 2002 requires a judge to determine any matter raised as a ground of appeal. Therefore, the failure of the judge to address and determine the Article 8 claim constitutes an error of law. However, we consider that the error of law was not material as the appellant was bound to fail on the Article 8 claim.

12. The appellant submitted (in his grounds for permission to appeal) that he had built up a private life in the UK (although the grounds of appeal mention family life no submissions were made in that regard). In particular the appellant considered that he has invested a large sum of money, time and effort to complete his studies. Curtailment of his leave would disrupt his studies and would be a disproportionate interference in his private life. No further details were provided at the hearing.

13. The submissions in the grounds seeking leave to appeal are of a generic nature (we noted that paragraph 19 appears relates to another case) and Mr Hussain was not able to articulate how the decision breaches the appellant's private life. He seemed to accept that the issue depended on fairness and the judge found that

there was no unfairness and permission has not been granted on this issue. The evidence before the judge to support the article 8 ground was skeletal, essentially one paragraph in the appellant's witness statement. It clearly was not advanced in any meaningful way at the hearing. It is for the appellant to put forward his case and not for the judge. He had made a witness statement and he gave evidence and it was for him to establish the significance of any private life here.

14. We have considered the grounds of appeal in relation to Article 8 that were before the First Tier Tribunal. The appellant in those grounds relied upon the *obiter* remarks of the Upper Tribunal in *CDS (PBS "available" Article 8) Brazil* [2010] UKUT 305 (IAC) ('*CDS*'). The Upper Tribunal in that case, having found for the Appellant on the Immigration Rules, went on to consider the Article 8 claim. The Upper Tribunal commented:

> "17. It is apparent from these principles that Article 8 does not provide a general discretion in the IJ to dispense with requirements of the Immigration Rules merely because the way that they impact in an individual case may appear to be unduly harsh. The present context is not respect for family life that can in certain circumstances require admission to or extension of stay within the United Kingdom of those who do not comply with the general Immigration Rules. It is difficult to imagine how the private life of someone with no prior nexus to the United Kingdom would require admission outside the rules for the purpose of study. There is no human right to come to the United Kingdom for education or other purposes of truly voluntary migration.
>
> 18. However, the appellant has been admitted to the UK for the purpose of higher education and has made progress enabling extension of stay in that capacity since her admission in 2007. We acknowledge that that gives no right or expectation of extension of stay irrespective of the provisions of the Immigration Rules at the time of the relevant decision on extension.
>
> 19. Nevertheless people who have been admitted on a course of study at a recognised UK institution for higher education, are likely to build up a relevant connection with the course, the institution, an educational sequence for the ultimate professional qualification sought, as well as social ties during the period of study. Cumulatively this may amount to private life that deserves respect because the person has been admitted for this purpose, the purpose remains unfilled, and discretionary factors such as mis-representation or criminal conduct have not provided grounds for refusal of extension or curtailment of stay.
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> 20. In the present case a change in the sponsorship rules during the course of a period of study has had a serious effect on the ability of the appellant to conclude her course of study. Some requirements of the Immigration Rules or applicable public policy scheme may be of such importance that a miss is as good as a mile, but this is not always the case."

15. It is clear from these passages that the Upper Tribunal acknowledged that it is possible for a private life, built up as a result of a combination of factors in connection with a course of study, to engage Article 8. However, this case must be considered in light of subsequent case law. That is not to say that it can no longer be considered good law as found by the Upper Tribunal in *Nasim* (para 41)

> "…Mr Jarvis urged us to find that the obiter remarks in CDS regarding Article 8 were no longer good law, in the light of Patel and Others. 'We find that would go too far... It would, however, be wrong to say that the point has been reached where an adverse immigration decision in the case of a person who is here for study or other temporary purposes can never be found to be disproportionate…' "

16. The Supreme Court in *Patel* clearly set out that the opportunity to complete a course of education is not **in itself** a right protected under Article 8 - in the judgment of Lord Carnwath at para 57

> "57. It is important to remember that Article 8 is not a general dispensing power. It is to be distinguished from the Secretary of State's discretion to allow leave to remain outside the rules, which may be unrelated to any protected human right. The merits of a decision not to depart from the rules are not reviewable on appeal: section 86(6). 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."

17. In *Nasim* the Upper Tribunal recognised that Article 8 has limited utility in private life cases that are far removed from an individual's moral and physical integrity. At paragraph 20 the Upper Tribunal considered that

> "… Patel and Others is 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, that interest will consequently prevail in striking the proportionality balance (even assuming that stage is reached)' and as summarised in the headnote - '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"

18. The appellant's reliance on *CDS* is misplaced. The circumstances of the appellant are not analogous to those of the appellant in *CDS*. There has been no change in the sponsorship rules and the appellant in this case had not enrolled on the relevant course. The appellant's claim is, in essence, that the ability to complete his studies is a right protected by Article 8. As held in *Patel* this is not in itself a protected right. In the light of the above mentioned cases as applied to the facts of this case it is clear that the appellant's Article 8 claim was bound to fail and as such the error in the judge's determination cannot be material to the outcome of the appeal.

Summary of decision

19. Although the judge of the First-tier Tribunal made an error of law this was not a material error. The appeal is therefore dismissed.

Signed P M Ramshaw Date 10 June 2015

Deputy Upper Tribunal Judge Ramshaw