



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

Appeal Number: IA/39523/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1 July 2015**

**Decision & Reasons  
Promulgated  
On 14 August 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL**

**Between**

**MS RUPALBEN NIKESHKUMAR PATEL  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Richards (Counsel)

For the Respondent: Mr P Duffy (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. The appellant's appeal against decisions to refuse to vary her leave and to remove her was allowed by a First-tier Tribunal Judge in a decision promulgated on 23 December 2014. That decision was set aside, as containing material errors of law, in a decision of the Upper Tribunal promulgated on 15 May 2015. In directions made on the same day, the appellant or her solicitors were required to provide a witness statement

explaining the appellant's absence from the hearing at Field House on 8 May 2015.

2. The resumed hearing, at which the decision would be re-made, was listed for 1 July 2015. There was no appearance by the appellant and her Counsel, Mr Richards, said that attempts to locate her on the day had been unsuccessful. No further evidence from the appellant had been made available and so her case was advanced in reliance upon the bundle provided to the First-tier Tribunal on 2 October 2014. That bundle contained a witness statement.
3. Mr Richards said that, so far as the requirements of the rules were concerned, he had no further instructions and relied on the evidence contained in the bundle. It was accepted that the appellant was unable to show a valid CAS. Shortly after the adverse decisions, she received a B2 certificate, this being an essential requirement but not one capable of determining the application for leave in her favour. So far as the appellant's case on fairness was concerned, on which the First-tier Tribunal Judge had made findings, this was pursued in the Upper Tribunal but he had no further submissions to make on this point. So far as Article 8 was concerned, Mr Richards had no instructions to withdraw this part of the case. It was clear that the First-tier Tribunal judge had not gone into details and it was accepted that the appellant's witness statement contained no particularised Article 8 case. Again, no further evidence was available.
4. Mr Duffy said that there was little more to be said. The appellant did not meet the requirements of the rules and her fairness case had already been dealt with at the earlier Upper Tribunal hearing. The Secretary of State relied on guidance given in Marghia [2014] UKUT 00366. There was no procedural irregularity in this case and nothing to show any substantive unfairness in the decisions made.
5. So far as Article 8 was concerned, the Secretary of State relied on the decision of the Supreme Court in Patel [2013] UKSC 72 and guidance given by the Upper Tribunal in Nasim & Others [2014] UKUT 25. The appellant was someone who had been present in the United Kingdom for a relatively short time as a student. There was nothing to show any particular ties and so she might struggle to show that Article 8 was engaged. She fell far short of showing that the requirements of the private life Immigration Rules were met and it appeared from the limited evidence that nothing else had been advanced.
6. Mr Richards had nothing to add to his earlier submissions.

### **Findings and Conclusions**

7. In this appeal, the burden lies with the appellant to prove the facts and matters she relies upon and the standard of proof is that of a balance of

probabilities. The appellant's case in the remaking of the decision has been entirely borne by the evidence contained in the bundle her solicitors provided in October 2014, in readiness for the First-tier Tribunal hearing.

8. The background and the appellant's immigration history appear in the decision of the First-tier Tribunal Judge and in the decision of the Upper Tribunal promulgated in May this year. There is no need to rehearse the facts.
9. As Mr Richards accepted, the appellant has been unable to show a valid CAS, and so has been unable to mount any substantive challenge to the Secretary of State's finding that the lack of such a document was fatal to her application for further leave. Shortly after her application was refused, she came into possession of a certificate showing her abilities in the English language but this was insufficient to show that the requirements of the rules were met.
10. The First-tier Tribunal Judge found that there was unfairness on the part of the Secretary of State in deciding the application in the absence of a CAS certificate. In concluding that this amounted to an error of law, I found that there was no procedural or substantive unfairness and that the Secretary of State was entitled to refuse the application for leave precisely because the appellant had no valid CAS. Overall, the decision making process in this case contained no unusual or irregular features at all. The appellant applied for further leave but was unable to show that the requirements of the rules were met and the Secretary of State made an adverse decision. The appellant had no prospects of success in her application.
11. So far as Article 8 of the Human Rights Convention is concerned, the witness statement the appellant made on an uncertain date, contained in the bundle provided by her solicitors in October 2014, advanced no detailed case at all. Although the First-tier Tribunal judge took Article 8 into account, the decision contained no findings on this aspect.
12. As Mr Duffy submitted, the appellant is a person who arrived in the United Kingdom relatively recently in October 2009, as a student. There is nothing in her witness statement to suggest that she has any substantial ties to the United Kingdom and no detail at all about her remaining ties to India. She cannot show that the private life requirements of the rules, contained in paragraph 276ADE have been met. There is nothing to show that she has any individual interests covered by Article 8 which give rise to a strong claim that compelling circumstances may exist to justify the grant of leave outside the rules (see paragraph 56 of the judgment in SS (Congo) and Others [2015] EWCA Civ 387). There are no compelling circumstances not sufficiently recognised under the rules and it is enough in this case simply to say so (see paragraph 33 of the judgment in Sunasse [2015] EWHC 1604 (Admin)). Even if the evidence did justify an assessment outside the rules, the appellant would not succeed in the light of guidance

given by the Supreme Court in Patel [2013] UKSC 72 and by the Upper Tribunal in Nasim and others [2014] UKUT 25. The factors set out in section 117B of the 2002 Act emphasise the public interest in maintaining effective immigration controls and reveal the weakness of the appellant's Article 8 case, as she has no qualifying partner or qualifying child and her status has been precarious throughout her time here.

13. The appellant has not shown that the decisions to refuse to vary her leave and to remove her by way of directions under Section 47 of the Immigration, Nationality, Immigration and Asylum Act 2006 are unlawful and her appeal is dismissed.

### **Notice of Decision**

14. The decision of the First-tier Tribunal has been set aside and is remade as follows: appeal dismissed.

### **ANONYMITY**

15. There has been no application for anonymity at any stage in these proceedings and I make no direction on this occasion.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell

### **TO THE RESPONDENT** **FEE AWARD**

As the appeal has been dismissed, I make no fee award.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell