



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/00032/2016

THE IMMIGRATION ACTS

Heard at Field House
On 14 May 2018

Decision & Reasons Promulgated
On 21 May 2018

Before

UPPER TRIBUNAL JUDGE PITT

Between

MD ABUL KALAM AZAD
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms C Fletcher, Counsel, instructed by Adam Bernard Solicitors
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a re-making of Mr Azad's appeal against the respondent's refusal of further leave as a Tier 4 student. The re-making is required following the setting aside of the determination of First-tier Tribunal Judge Oliver promulgated on 18 July 2017 in my error of law decision issued on 16 March 2018.
2. The appellant is a citizen of Bangladesh born on 17 March 1985. He came to the UK with leave as a student from 13 October 2009 to 31 October 2013. He applied in time to extend that leave. The application was refused on 31 January 2014.

3. Mr Azad appealed. His appeal was allowed on 2 January 2015. The First-tier Tribunal found that the appellant had started classes at a new college, Lea Valley College, on 11 November 2013, that is, within a month of the end of his substantive leave albeit he did not obtain a CAS until 20 January 2014. The First-tier Tribunal allowed the appeal on the basis that the respondent's decision was not in accordance with the law and remitted the matter to the respondent for a new decision to be made.
4. The respondent made a new decision on 26 May 2015, affording the appellant 60 days to obtain a new CAS, that is by 25 July 2015. The appellant made an application for further Tier 4 leave on 24 July 2015 in order to begin a course on 17 August 2015.
5. On 19 November 2015 the respondent refused leave as the application made on 24 July 2015 was not accompanied by a new CAS notwithstanding the 60 day period afforded to the appellant to obtain that document.
6. The appellant appealed again. He maintained that he had been unable to obtain a new CAS, that this was not his fault and the respondent should have afforded him more time to obtain a new CAS. He maintained that the decision breached Article 8 ECHR.
7. The appeal came before First-tier Tribunal Judge Oliver on 26 June 2017. That decision had to be set aside for procedural error.
8. The appellant now maintains his argument that the respondent acted unfairly in not affording him further leave to obtain a CAS. His previous college, London Essex College, had been closed down and he was unable to obtain his Level 5 certificate which was required for a new college to provide him with a CAS. He therefore contacted EDEXCEL, the awarding body for his Level 5 certificate. They advised him to contact the college as only the educational institution could issue the Level 5 certificate. The appellant therefore submitted his application for further leave on 24 July 2017, within the 60 days allowed but with only a conditional offer from Bedfordshire College as they could not issue a CAS without the evidence of progression in previous studies.
9. The appellant's submissions conceded that he could not meet the Immigration Rules where there was no CAS; see paragraph 6 of the skeleton argument dated 27 April 2018.
10. It was argued, however, that he had "made various attempts to try and obtain a valid CAS document" (paragraph 7 of the skeleton argument) and that he "regularly updated the Respondent to his position" (paragraph 8 of the skeleton argument. It was also submitted that the appellant was unable to obtain a CAS because of the action of the respondent in closing down London Essex College and not affording him further time to obtain a CAS. Reliance was placed on Patel v SSHD [2018] Civ 229 at paragraph 31 to support the submission that the respondent's actions had led to the appellant's difficulties and she had acted unfairly in refusing leave.
11. It is not my conclusion that the inability of the appellant to obtain his Level 5 certificate could be said to be the responsibility of the respondent even where it is undisputed

that he took London Essex College off the education sponsor's register. The respondent acted fairly in regard to the removal from the register by affording the appellant 60-days to obtain a CAS. Nothing in the materials suggests that he raised his difficulty obtaining a Level 5 certificate with the respondent or sought an extension of time to deal with any problems he was having prior to making the application for further leave on 24 July 2017. The materials show only that he emailed EDEXCEL on 30 June 2017, over 30 days into the 60 day period; see G2 of the appellant's bundle. He received a reply on 8 July 2017 informing him that only the educational institute could provide the Level 5 certificate; see G3. It is possible he emailed EDEXCEL again prior to 24 July 2017 but the email at G14 is not dated. The remaining email to EDEXCEL at G1 is dated 22 September 2017, after the 60 day period had expired and after he had put in his further leave application.


12. At best, therefore, the appellant emailed EDEXCEL twice prior to the expiry of the 60 day period and did not inform the respondent that he had a problem with the Level 5 certificate or required further time. Following the Court of Appeal in Patel at paragraph 31, the evidence in this case is not capable of showing that the respondent bore responsibility for the failure of London Essex College to provide the appellant with a Level 5 certificate or for the systems at EDEXCEL which precluded the organisation from providing the appellant with a Level 5 certificate. The respondent did not act unfairly or otherwise unlawfully in refusing leave for want of a CAS, therefore.
13. This was really the high point in the appellant's proportionality argument under Article 8 ECHR. He had only ever had precarious leave so his private life must weigh little in that assessment. He cannot meet the Immigration Rules. That is so even if paragraph 276ADE (vi) is considered. He has lived for most of his life and all his formative years in Bangladesh. He confirmed that his mother and his sister and her husband live there and have a flat there. He confirmed that another brother-in-law has been supporting him financially in the UK and nothing suggested that he would not continue to do so if the appellant returned to Bangladesh. There are no significant obstacles to reintegration here.
14. In the appellant's favour is his ability to speak English and to be independent financially. Those s.117B factors are not capable of outweighing the public interest in maintaining an effective immigration system where he cannot meet the Immigration Rules, however, and given that he has family and financial support if he returns to Bangladesh.
15. The evidence adduced in writing from the Qureshi family, friends he has made in the UK, was not supported by oral evidence from them, and was, even at its highest incapable of showing that the appellant had a family life with them for the purposes of Article 8 ECHR. The appellant's statement that he did not know that he could ask the Qureshi family to attend the hearing to give evidence was not credible given that he is legally represented and could be expected to have been advised on this matter.

16. The appellant sought to admit evidence at the hearing during cross-examination on entirely new protection matters. This was not a ground of appeal, had never been referred to before and could not come within the scope of this re-making of a Tier 4 and Article 8 ECHR appeal. Ms Fletcher quite properly indicated that she had not been instructed on such a matter. The appellant can make a protection claim if he wishes in the prescribed manner.
17. For these reasons the appeal is refused.

Notice of Decision

The determination of the First-tier Tribunal discloses an error on the point of law and is set aside.

The appeal is re-made as refused under the Immigration Rules and Article 8 ECHR.

Signed 
Upper Tribunal Judge Pitt

Date 15 May 2018