



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/06737/2013

THE IMMIGRATION ACTS

Heard at Field House
On 1 November 2013

Determination Promulgated
On 19 November 2013

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MUHAMMAD AZAM KAMRAM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representative
For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The Appellant is a citizen of Pakistan born on 28 March 1979. He appealed against the decision of the Respondent of 25 February 2013 cancelling his leave to remain in the United Kingdom.

2. The matter came before First-tier Tribunal Judge Clayton on 3 July 2013 and was dismissed.
3. Grounds of appeal were lodged against that decision and permission to appeal granted. Thus the matter comes before me in pursuance of that grant.
4. The Appellant attends unrepresented.
5. The background to the matter is that the Appellant was granted leave to enter as a student in January 2011 to study for a postgraduate diploma at Brentford College. Seemingly he passed that course, obtaining a diploma on 30 May 2013. That college had its licence withdrawn and the Appellant therefore sought to continue study at the British Institute of Technology and Commerce, the studies to commence in October 2012.
6. Essentially the Appellant did not turn up at the college and sponsorship was withdrawn. He went to Pakistan and was encountered by the immigration services upon his return on 10 March 2013. The sponsor was satisfied that the Appellant had not applied himself to his studies this being the reason why he was in the United Kingdom and leave was therefore curtailed.
7. It would seem that the reason for the Appellant not attending the college was that he had been involved in a motor cycle accident and injured his ankle. There was in the papers before the judge various medical documents and letters, in particular a document from Kings College Hospital London Emergency Department showing the Appellant's admission on 29 October 2012. Thereafter there are various medical certificates indicating that the Appellant should stay at home and rest because of his ankle. The Appellant indicated that it was because of the pain in his ankle that he was unable to study and indeed returned home to Pakistan in order to recover from his injury.
8. It is his account that he is now reconciled with his college who have allowed him to continue to study three days a week since February 2013. He has in effect missed a term of work.
9. The Appellant did not attend the hearing before Judge Clayton nor was he represented. Contact was made with his solicitors who indicated that they had received a fax the previous day indicating that the Appellant could not attend the hearing. It was said that a notice of cancellation had been sent to the court but enquiries revealed no such message from the papers or administration.
10. The judge considered the excuse to be a flimsy one with no indication of any serious illness or anything to prevent him coming to the hearing. She commented "there was nothing to say he had attended any hospital or his GP."

11. In the event the Appellant gave an explanation before me that he suffers from diabetes as well as his painful ankle. The day before the hearing he had a very high blood sugar level, feeling ill and achy, with pain all over his body. He went to his GP who advised him not to go to court the following day. This was what prompted the contact he made with his solicitors. He said that the medical certificate was sent to the court although, as I have indicated, there is no record that it was received. However there has been produced by Mr Nath on behalf of the Respondent, a copy of a statement for fitness for work for statutory sick pay, which indicates that a Doctor Arshad certified the appellant not fit for work on 2 July 2013. Thus there would seem to be some support for what the Appellant had to say.
12. I indicated to Mr Nath that I had some concern as to the fairness of the proceedings, bearing in mind that there was before the judge the various documents concerning the Appellant's ill-health arising from his ankle. Admittedly these documents were more in terms of January 2013 rather than the summer of that year. Such may have served, however, to put the judge on enquiry that the Appellant's health may not be very good.
13. There was a second matter which has not been clarified from the various files, namely the evidential basis for the contention made in the reasons for refusal, that during the period September 2011 to October 2012 the Appellant had admitted that he was not studying nor did he wish to study at any acceptable educational institution. This was a matter dealt with by the judge at paragraph 10 of the determination. The Appellant contends that that is not right because he studied at the college in December 2011 through to May 2012. He said that his certificate was at home. He said that he incurred problems subsequent to that date because of the withdrawal of the licence of the college.
14. Mr Nath consulted his file but could find nothing that substantiated that particular contention being made. Indeed there is a certificate of completion from Brentford College of London dated 30 May 2012 indicating that the course started on 25 January 2011 and ended on 30 May 2012 and that the Appellant had passed that course.
15. It is clearly an important matter going to the bona fides of the Appellant and the nature of his studies, the significance being of course that if that be correct it would have preceded his accident and called into question therefore the reason he now gives for his absence from studies.
16. Mr Nath submits that there was no unfairness in the sense that the Appellant could not have succeeded on his appeal had he attended. He had not notified the college or the Respondent of his medical difficulties and it is understandable in those circumstances that the college would decline further to sponsor him and thus his leave properly fell to be cancelled.

17. The Appellant indicated, however, that he was a bone fide student and was studying. It was his ill-health that had prevented him from starting promptly and that it was both unreasonable and disproportionate to cause him to return to Pakistan to make any application to return to complete his studies.
18. I am concerned as to the issue of fairness and consider that the Appellant ought to be given the opportunity of presenting his case for fullest consideration.
19. I make it entirely clear that it is understandable how the judge came to her conclusion about the adjournment and no doubt it may be said that from her perspective what she did was entirely reasonable. The test is, however, not one of reasonableness but one of fairness.
20. In the circumstances it seems to me that fairness demands that the decision be set aside and that it be remade. Given the fact finding that will be required and the attention to detail I find that the appropriate forum, having considered the Senior President's Practice Directions paragraph 7, is the First-tier Tribunal for a rehearing.
21. As the Appellant was unrepresented I stressed to him that the burden rests upon him to show that the Respondent acted unreasonably in all the circumstances in cancelling his leave.
22. There was a lack of information in particular from the current college confirming or otherwise what the Appellant had to say about continuing studies at that college since February 2013. The college will need to confirm on what basis they have accepted the Appellant for the study and the progress that he is making. The Appellant should also produce evidence that he did indeed study until May 2012 at the Brentford College.
23. In addition I suggested that the Appellant should prepare a brief witness statement setting out why it was that it was disproportionate of the Respondent to expect him to return to Pakistan to make a fresh application.
24. It seems to me that the fairest course is for the Appellant to give his evidence so as to allow a First-tier Tribunal Judge to decide whether his return to Pakistan is in the circumstances of his accident and illness proportionate or disproportionate.

Directions

- (1) The decision of First-tier Tribunal Judge Clayton is set aside to be remade.
- (2) That decision will be remade by the First-tier Tribunal.
- (3) A date for hearing is 27 November 2013 at Taylor House.

- (4) The Appellant shall produce the evidence which is required of him as set out above.
- (5) If the Respondent seeks to rely upon the indication that the Appellant had not studied at all from December 2011 to October 2012 the source of that information should be identified in advance of the hearing.

Signed

Date

Upper Tribunal Judge King TD