Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/06935/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Sent**
On 2nd September 2013	**On 3rd September 2013**
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Before

UPPER TRIBUNAL JUDGE COKER

Between

OLUWASEGUN BAKER

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Young, solicitor, instructed by Sunrise solicitors
For the Respondent: Ms E Martin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals a decision of First tier Tribunal Judge Vaudin d'Imecourt who dismissed an appeal by him under the Immigration Rules and on human rights grounds against a decision made on 12th February 2013 to refuse to vary leave to remain. Permission to appeal was granted by First-tier Tribunal Judge Zucker on the ground that there was an arguable error of law in the Judge of the First tier Tribunal's finding that the decision was not disproportionate.

2. Permission to appeal had been sought on the grounds, in essence, that the judge had fundamentally misunderstood the appellant's evidence as regards the appellant's knowledge of the procedural requirements for his variation application; that the First-tier Tribunal had speculated as to the appellant's ability or non ability to pay his academic fees; that there was no supporting evidence that the appellant had been hospitalised as claimed and that the appeal was not covered by CDS Brazil [2010] UKUT 00305 (IAC); that the judge had given weight to irrelevant matters in determining the appeal namely the intention to return to his home country or pursue a PhD. Permission was refused on the first two grounds but granted on the basis that it was arguable that the First-tier Tribunal had failed to adequately consider the appeal in terms of CDS given that the judge appeared not to have taken account of evidence produced by the appellant with regards to his hospitalisation and medical condition. Judge Zucker did not reach a decision on the final ground.

3. The appellant had not sought to renew the application for permission to appeal the first two grounds save that before me it was submitted that the skeleton argument amounted to such an application. I was not provided with any explanation for the delay in submitting such an application or with an application to extend time. I refuse permission to extend time. Even if I had extended time and admitted the application I would have refused permission to appeal:

    a. Ground 1 amounts to no more than a disagreement with the First-tier Tribunal judge's findings that the appellant had not been entirely candid in his evidence and that the explanation the appellant had given with regards to his failure to submit the requisite financial evidence was not accepted;
    b. In so far as ground 2 is concerned the judge had found that at the date of application to the respondent for a variation he did not meet the requirements of the Rules but had paid the fees; the issue of fees was for future fees payable which were as yet undetermined according to the appellant at the First-tier Tribunal hearing. There is nothing in this ground.
    c. In any event s85A Nationality Immigration and Asylum Act 2002 makes clear that evidence adduced after the submission of the application (as in this appeal) may only be considered in accordance with the circumstances as set out in s85A(4). It was not submitted that such circumstances apply in this appeal. The appellant does not meet the requirements of the Rules in so far as maintenance is concerned and the appeal falls to be dismissed. There is no error of law in the First-tier Tribunal judge's determination as regards meeting the criteria under the Rules.

4. The First-tier Tribunal judge did not have the medical evidence before him when he reached his decision however the letter from the University of Birmingham did refer to the appellant's medical condition and granted the appellant an extension of time in which to complete his course. Mr Young

submitted that the failure of the First-tier Tribunal judge to take proper cognisance of the medical issues tainted the finding as regards the application as a whole and thus in accordance with CDS the appeal should be allowed. That submission however fails to take account of the fact that the appellant does not meet the maintenance requirements of the Rules; his medical condition changed the nature of the application in terms of it being a request for an extension of time to complete the course rather than an extension for a fresh course. Alam and Others v Secretary of State for the Home Department [2012] EWCA Civ 960 makes clear that the Rules are to be complied with. CDS pre dates the legislative change which was addressed by Alam. Although invited by me to make submissions as to the relevance of Alam Mr Young said that the issue in this appeal was of human rights and thus the evidence was clearly admissible and the outcome, had the First-tier Tribunal judge been fully aware of the evidence, might have been different.

5. Article 8 does not exist in order to circumvent the requirements of the Immigration Rules. The presence of medical factors does not in any way mitigate the failure to comply with the requirements of the Rules in so far as maintenance is concerned. Although the First-tier Tribunal judge appears to have been unaware of the medical evidence that was produced via the Birmingham University letter, had he been so aware the outcome would have been the same, given s85A and Alam.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision

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Date 2nd September 2013

Judge of the Upper Tribunal Coker