



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

Appeal Number: IA/11075/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 1st October 2013**

**Determination
Promulgated
On 4th October 2013**

Before

UPPER TRIBUNAL JUDGE COKER

Between

MOHAMMED SANAU ALAM

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Karim, counsel, instructed by Kalam Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by Mr Alam against a decision of the Secretary of State to refuse to vary his leave to remain as a Tier 1(Entrepreneur) Migrant and to remove him from the UK by way of directions under s47 Immigration Asylum and Nationality Act 2006 such decision being taken on 22nd March 2013 following an application on 9th February 2013.

2. Mr Alam has been in the UK lawfully since first entry on 21st November 2011 initially as a student and culminating in leave to remain as a Tier 1 (Post study work) migrant valid until 11th February 2013.
3. Before First-tier Tribunal Judge Davidson the Secretary of State withdrew the decision to remove Mr Alam under s47 as a consequence of which Judge Davidson held that he did not have to determine the appeal on Article 8 human rights grounds.
4. Judge Davidson determined that Mr Alam did not meet the requirements of the Immigration Rules in two specific matters: he had failed to provide marketing material which gave his name (as required by Appendix A paragraph 41(c)(iii)(1) and the contract he provided did not have on the face of it a landline or email address as required by Appendix A paragraph 41(c)(iv)(3). Judge Davidson, in reaching his decision considered the Secretary of State's Evidential Flexibility Policy and the caselaw of Rodriguez [2013] UKUT 00042(IAC). He does not consider paragraph 245AA of the Immigration Rules which was in force at the date of application and decision. It does not appear that this was brought to his attention.
5. Permission to appeal was granted on the grounds that it was arguable that the First-tier Tribunal judge had failed to consider Article 8 and that it could not be said that a decision to dismiss the appeal under Article 8 was inevitable. Given the length of time the appellant had been in the UK and the relatively weak arguments made on behalf of the Secretary of State regarding the extent of the public interest in removing him. Although considered to be weak, permission to appeal was also granted on the grounds that the judge had erred in his application and consideration of the Evidential Flexibility policy.
6. The Secretary of State confirmed in her Rule 24 response that the judge had erred in his consideration of Article 8 and requested an oral continuance hearing.
7. Before me Mr Karim referred extensively to paragraph 245AA submitting in essence that the failure of Mr Alam to meet the strict requirements of the Rules as to marketing materials and contract requirements were insignificant and alternatively that the failures amounted to the production of documents in the 'wrong format' and were thus covered by paragraph 245AA of the Rules: the Secretary of State should have requested further additional material to enable the appellant to produce the materials required to meet the Rules. He further submitted that the covering letter which, it was asserted accompanied the contract although not submitted until the day of the hearing before the First-tier Tribunal, did have the requisite information and should be read with the actual contract and thus met the Rules.

8. Dealing first with the meaning of 'wrong format' I am not satisfied that this term enables information that is missing to be considered as constituting a document in the wrong format. Format is a term that relates to the physical properties of a document not to the information in the document. Paragraph 245AA enables the Secretary of State to accept documents that comply with the requirements of the Rules in terms of the information provided albeit in a different format to that set out in the Rules. Paragraph 245AA sets out the circumstances in which the Secretary of State will request missing documents. Neither of these applies to this appellant: the documents submitted simply did not include the information required. Although the appellant argued that the covering letter amounted to additional information that formed part and parcel of the contract, that letter was not submitted until the date of the hearing and the advert in any event did not meet the requirements of the Rules. There was no requirement, under the Rules, for the Secretary of State to request the letter; there was nothing on the face of the documents before her to indicate that something significant may be missing and in any event the application would fail because it did not comply with the marketing requirements.
9. There is no error of law in the decision in so far as compliance with the Immigration Rules is concerned.
10. In so far as Article 8 is concerned the Secretary of State concedes there is an error of law by the First-tier Tribunal Judge: he found that Article 8 was not engaged because of the withdrawal by the Secretary of State of the removal decision under s47. Although submitted by Mr Karim that this resulted in the appeal being reheard on Article 8 grounds this was not accepted by Mr Bramble who stated that although it was accepted that the judge had erred in law, it was not accepted that the error was such as to merit the setting aside of the decision to be remade.
11. I agree. The fact that a First-tier Tribunal Judge has erred in law does not absolve the Upper Tribunal from considering the extent and nature of that error such as to determine whether the error results in the setting aside and remaking of the decision.
12. In response to a question from me, Mr Karim confirmed that the basis of the Article 8 grounds of appeal are as set out in the skeleton argument and paragraph 7 of Mr Alam's witness statement; there was nothing further. These factors included, briefly, reliance by Mr Alam on his length of lawful residence, that he had developed strong ties with the UK since his arrival, his continued presence will not be a detriment to the UK economy but of benefit, that he has no criminal record and is unlikely to claim public funds.
13. Although all of the factors relied upon are correct and the relevant *Razgar* question is the final question of proportionality, they are not, at

their highest matters such as to overcome the public interest in the control of immigration. The secretary of State took her decision to refuse the application to vary leave within a reasonable time frame; Mr Alam does not meet the requirements of the Immigration Rules for a variation in his leave to remain and the attributes upon which he relies in his Article 8 grounds of appeal are little more than would be expected of a law abiding migrant to the UK who has come to the UK to undertake studies and post qualification work. None of the categories in which he has had leave to remain carry with them an expectation of future settlement. It is inconceivable that any First-tier Tribunal judge would, in this appellant's circumstance have found that the decision to refuse to vary leave to remain was a breach of Article 8.

14. On this basis although the judge erred in law in failing to reach a decision on the article 8 grounds of appeal, that error was not such as to merit the setting aside of the decision.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision is set aside to be remade. The appeal is dismissed.

Date 3rd October 2013

Judge of the Upper Tribunal Coker