



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

Appeal Number: IA/01846/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14 August 2014**

**Determination
Promulgated
On 20 August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE APLEYARD

Between

**MR ADNAN KADIR KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. A. Mustakim, Counsel.

For the Respondent: Mr E. Tufan, Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The appellant, born on 24 February 1983, is a citizen of Bangladesh.
2. He entered the United Kingdom on 21 May 2011 with leave as a Tier 4 (General) Student from 13 April 2011 until 30 October 2012. On 30 October 2012 he applied for leave to remain in the United Kingdom as a

Tier 4 (General) Student Migrant under the points-based system. The application was refused by the respondent on 19 December 2013. The appellant appealed and following a hearing at Hatton Cross Judge of the First-tier Tribunal Prior, in a determination promulgated on 5 June 2014, dismissed the appellant's appeal. He did so both under the Immigration Rules and on human rights grounds.

3. On 27 June 2014 Judge of the First-tier Tribunal P J M Hollingworth gave his reasons for allowing the appellant's application for permission to appeal. They state:

- "1. An arguable error of law has arisen. The judge was not satisfied that Article 8 was engaged. Some confusion has arisen as to the opportunity for the appellant to pursue further studies either in the United Kingdom or in Bangladesh. In these circumstances it is unclear whether the judge has considered the relevant factors in relation to whether Article 8 was engaged."

4. Thus the appeal came before me today.

5. The respondent's refusal letter had made reference to Section 50 of the Borders, Citizenship and Immigration Act 2009 prohibiting a student from studying other than at the institution that the Confirmation of Acceptance for Studies Checking Service records showed as the student's sponsor. The letter explained the refusal of the application under the general grounds set out in paragraph 322(3) of the Immigration Rules HC 395 as follows:

- "You were last granted leave based on the successful application made on 15 March 2011 for entry clearance as a Tier 4 (General) Student Migrant to study with Briton Universal College. However you have provided evidence of having completed a full-time course at Primrose College throughout your time of leave. In view of the fact that you did not make a fresh application in order to study at Primrose College and the certificate confirms that you completed study at an institution you were not granted leave for on 15 October 2002. The Secretary of State is not satisfied that you have complied with the conditions attached to your leave to enter."

6. At the First-tier hearing there was no evidence of the appellant's attendance at Briton College and as the appellant had only been in the United Kingdom studying since 2011 the respondent urged the judge to accept that he had not established such an extensive private life as one that would be disproportionately interfered with upon his removal.
7. The judge found that there was no documentary evidence of the appellant's pursuit of his diploma course in hospitality and tourism management at Briton Universal College and that the only evidence of a documentary kind was in relation to the course at Primrose College. This confirmed it to be a full-time one. The judge attached no weight to the

appellant's evidence that he had attended that course as he did not find him a credible witness. The appellant further submitted that the Primrose College course was a part-time one in contrast to the documentary evidence that was before the judge.

8. It is recorded at paragraph 15 of the judge's determination that the appellant did not challenge the respondent's position that if he had substituted one full-time course at Briton College for another full-time course at Primrose College he would be in breach of a condition attached to his grant of leave to enter the United Kingdom in the terms of sub-paragraph 322(3) of the Immigration Rules HC 395 (as amended).
9. The judge went on to find that the appellant's own conduct therefore breached a condition attached to his grant of leave to be in the United Kingdom and to dismiss the appeal on Article 8 grounds.
10. Today Mr Mustakim submitted that there was no basis for concluding that the appellant did not go to Briton College. Ultimately it closed down and the appellant was unable to obtain information from it. The finding of the judge as to his non-attendance is not accepted and in any event the appellant would be allowed under policy guidance to attend simultaneously extra studies. Mr Mustakim argued that the course at Primrose College was a part-time one and therefore the appellant had not fallen foul of any Rules. However, Mr Tufan referred me to the documentary evidence which clearly showed that it was a full-time course. It was submitted on behalf of the appellant that despite the documentary evidence the course was a part time one.
11. It was also argued that the respondent's decision was generally unfair and that the appellant's circumstances had to be looked at in context. Those circumstances should have caused the judge to find that the respondent's decision was a disproportionate one within Article 8.
12. Mr Tufan emphasised the narrow grounds upon which permission had been granted. He highlighted the documentary evidence that the judge considered showing the Primrose College course to be a full-time one and asserted that the nub of the appeal was not in relation to Briton College but the fact that the appellant chose to attend another course for which he did not have permission.
13. Quite fairly Mr Tufan, on considering the respondent's decision, acknowledged the absence of any exercise of the respondent's discretion in relation to paragraph 322(3) of the Immigration Rules HC 395 (as amended). He referred me to the authority of **Patel and Others v SSHD [2013] UKSC 72** and contended that the appellant only ever entered the United Kingdom for temporary purposes and that there was no disproportionality in the respondent's decision in under Article 8.
14. It appears from the application for permission to appeal that the grounds were drafted by the appellant himself and I find that permission was

granted with an abundance of caution to what appeared to Judge Hollingworth to be, at that time, an unrepresented litigant.

15. On my analysis there was ample justification for the judge's adverse credibility findings and he has given cogent and sustainable reasons for coming to the conclusions that he did including that the Primrose College course was a full-time one. This is germane to the finding that the appellant's conduct represented a breach of a condition attached to the grant of his leave and that his appeal under the Immigration Rules must be dismissed.
16. Whilst Mr Tufan quite fairly highlights the absence of the exercise of the respondent's discretion within the decision there was before me this afternoon no application to amend the grounds of appeal. Those grounds caused Judge Hollingworth to grant permission on a limited basis. I find that there is no confusion whatsoever within paragraph 17 of the judge's determination in relation to whether or not the appellant can pursue his studies either in the United Kingdom or in Bangladesh. The judge was simply making the point that the appellant was open to follow a course similar to the one he proposed in the United Kingdom were he to be returned to Bangladesh.
17. Whilst the judge may have erred in concluding that the removal would not cause the appellant's Article 8 rights to be engaged I do not find this to be a material error. As the judge finds in the determination the appellant could not have come to the United Kingdom with any expectation that leave would inevitably be granted to him to remain to undertake studies beyond those for which he was granted leave to enter. Any decision that causes him to be removed and infringes upon his right to private life in the United Kingdom is, in the context of the factual matrix here, a proportionate one.
18. The Immigration Judge has properly considered the totality of the evidence that was before him in relation to all aspects of the appellant's appeal under both the Immigration Rules and on human rights grounds.
19. The conclusions of the judge were open to him to be made in all the circumstances.
20. The making of the previous decision involved the making of no material error on a point of law and I do not set the decision aside but order that it shall stand.
21. No anonymity direction made.

Signed

Date 19 August 2014.

Deputy Upper Tribunal Judge Appleyard