



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/12612/2013

THE IMMIGRATION ACTS

Heard at Glasgow  
on 1 April and 10 September 2014

Determination promulgated  
on 11 September 2014

Before

UPPER TRIBUNAL JUDGE MACLEMAN  
UPPER TRIBUNAL JUDGE DAWSON

Between

CASPAR KUMIRE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Appellant present on 22 July 2014 and on 10 September 2014; no representative

For the Respondent: on 22 July 2014, Mrs S Siddique, Presenting Officer; on 10  
September 2014, Mrs M O'Brien, Senior Presenting Officer

No anonymity order requested or made

DETERMINATION AND REASONS

1. The appellant is a citizen of Zimbabwe, born on 5 April 2013. He applied on 24 January 2013 for leave to remain as a Tier 1 (General) Migrant under the Points based System (PBS). The respondent refused his application on 5 April 2013, referring to paragraph 245CA and Appendix A of the Immigration Rules. The first reason was that the appellant had not last been granted leave in any of the categories required by paragraph 245CA (f) (i)-(iv). This was not a points-based issue and was decisive on its own. Secondly, the appellant had supplied only 2 payslips covering 2 months' earnings totalling £3000, which fell short of

requirements, and so would not be entitled to points either for previous earnings or for UK experience.

2. The appellant appealed to the First-tier Tribunal. Rather than alleging error by the respondent in evaluating his application, his grounds are an expression of dissatisfaction with the changing and confusing requirements of the Rules.
3. First-tier Tribunal Judge McGavin heard the appellant's appeal on 11 September 2013. The appellant attended, without representation. Mrs Siddique was the Presenting Officer. In her determination, promulgated on 24 September 2013, the Judge said that although the appellant understandably felt aggrieved, she could find nothing to permit the appeal to be allowed under the rules, on grounds of "fairness", or on human rights grounds.
4. The appellant submitted self-prepared grounds of appeal to the Upper Tribunal. Some parts of the grounds are critical of the Judge's conduct of the hearing. On 29 January 2014 First-tier Tribunal Judge Gibb granted permission to appeal, because although the assertions about conduct of the hearing were made without supporting evidence or a response from the Judge, "... issues of an unrepresented appellant being seen to have a fair hearing are important in themselves, even if the eventual outcome is unlikely to be different."
5. In view of the nature of the grounds, Judge McGavin was asked to provide her response to what was said to have happened at the hearing before her. She provided that in a note dated 6 March 2014. Her typed record of the proceedings, made on the day, was already on file. The Judge said that she had probably asked the appellant not to use documents before him as a prompt; that during any period when she was with the Presenting Officer in his absence, there was no discussion of his case; and that his nationality had no bearing on her decision.
6. The case came before Judge Macleman at a "for mention" hearing on 22 July 2014. Unfortunately, the record of proceedings and Judge McGavin's response to the grounds had not been issued to parties in advance. The UT supplied copies, and gave parties some time to consider them. The appellant said he might have preferred the UT to go ahead and resolve his case without fixing a further hearing. That was not possible, because the same Presenting Officer was in attendance. The grounds bore on her involvement in the FtT hearing, so it would not have been appropriate for her to conduct a full hearing in the UT.
7. The appellant said he was satisfied with the answers to some of his points, but not to others. I suggested that he might wish to explain his position further in writing before the next hearing. I also explained to him that allegations of bias against a Judge are treated very seriously, and that in all respects it was for him to establish his grounds of appeal. He said that he had a sponsor to enable him to make another application, but he knew that in order for that to be considered he

would have to withdraw this appeal. I told him that was a matter entirely for him, on which the UT could not offer any advice.

8. The case was next listed to come before UTJ's Macleman and Dawson on 10 September 2014.
9. The appellant submitted a document dated 2 September 2014, which mainly repeats his original grounds of appeal. He says that he is asking for the chance to complete his professional qualification in architecture. He also says that he has made another application, but the respondent rejected it because he has an outstanding appeal.
10. Mr Kumire relied upon his statements and grounds.
11. Mrs O'Brien submitted that there was nothing to substantiate the allegations of bias or of procedural unfairness. As to the Immigration Rules, the application was always doomed to fail, for the various reasons mentioned above. There was no dispensation under article 8 of the ECHR for applicants who failed under their chosen routes of study or work through the Rules.
12. Mr Kumire said that when he applied, it was on the basis that he could switch into another category. If there were no transitional provisions to allow him to switch, the refusal decision should not have dealt with points scoring. The record confirmed that the Presenting Officer said in the First-tier Tribunal that the application should have been rejected as invalid. However, the Home office had gone ahead to deal with it, so it should have been accepted that it was a valid application. The judge had overlooked that point. He never claimed to be at any risk in Zimbabwe, so that should not have been mentioned. The determination was also wrong (¶12) in saying that he received advice from the respondent. He had consulted solicitors in Aberdeen after the refusal decision, but never obtained advice from the Home Office.
13. We explained to Mr Kumire that *Patel*, to which Mrs O'Brien had made brief reference, is an authority of the Supreme Court to the effect that article 8 of the ECHR confers no general dispensing power to enable students to complete their courses or qualifications.
14. Neither party had anything further to add.
15. We advised Mr Kumire that his appeal would be dismissed. Nothing he said amounted to a tenable argument that the First-tier Tribunal Judge made any material error, or that under the Rules his application could possibly have succeeded. While he might feel aggrieved that a particular route under the Rules had been closed off, the Tribunal had no power to re-write the Rules out of sympathy so as to provide him with another outcome. There was no substance in his submissions that anything untoward might have taken place between the

First-tier Tribunal Judge and the Presenting Officer. The proceedings and the determination did not show any bias or unfairness.

16. We mentioned to the appellant that while we could not give him any formal advice, and any further application would be decided by the respondent on its own merits, he should be careful, if he did make any further application, to do so as soon as possible, and no less than 28 days from the expiry of his leave as currently extended by these proceedings (which Mrs O'Brien confirmed to be the appropriate period.)
17. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law, such as to require it to be set aside, so that determination shall stand.

A handwritten signature in black ink, appearing to read "Hugh Maclean". The signature is written in a cursive style with a large, stylized initial 'H'.

10 September 2014  
Judge of the Upper Tribunal