



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

Appeal Number: IA/12693/2014

THE IMMIGRATION ACTS

Heard at Bradford

On 7th October 2014

Determination

Promulgated

On 15th October 2014

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JOHN KWESI-BUOR

Respondent

Representation:

For the Appellant: Mrs R Pettersen, Home Office Presenting Officer

For the Respondent: In person

DETERMINATION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Henderson made following a hearing at Bradford on 25th June 2014.

Background

2. The claimant is a citizen of Ghana born on 14th November 1971. He appealed against the Secretary of State's decision to refuse to grant him leave to remain as a Tier 4 (General) Student Migrant and to make directions for his removal. He accepted that he could not meet the maintenance grounds because of a brief shortfall in his funds, but argued that he ought to be allowed to remain in the UK on human rights grounds because he had almost finished his PhD, and his work to date would be wasted if he was unable to complete his thesis. He was within weeks of achieving his goal. He had been in receipt of considerable resources in terms of scholarships and his area of studies was not only beneficial to him but was of wide application since it was linked to humanitarian logistics and disaster relief.
3. The judge recorded that the claimant had a wife and child in Ghana and he would be returning to good employment there as an academic. He had no intention of remaining in this country but the timing of the decision to remove him was a disproportionate interference with his private life. On that basis she allowed the appeal.

The Grounds of Application

4. The Secretary of State sought permission to appeal on the grounds that the judge had erred both in finding there to be an arguable case for the existence of compelling circumstances not recognised under the Rules before embarking upon an Article 8 analysis outside of them and, second, had erred in finding Article 8 was engaged in this case.

The Hearing

5. The claimant told me that he had hoped to have finished his writing by last month but had not been able to do so. He was, however, in the final stages and needed a little more time in order to finish his work.

Findings and Conclusions

6. In Patel [2013] UKSC 13 the Supreme Court held that:-

“It is important to remember that Article 8 is not a general dispensing power. It is to be distinguished from the Secretary of State's discretion to allow leave to remain outside the Rules which may be unrelated to any protected human right. The merits of a decision not to depart from the Rules are not reviewable on appeal: Section 86(6). One may sympathise with Sedley LJ's call in Pankina for commonsense in the application of the Rules to graduates who have been studying in the UK for some years (see para 47 above). However, such considerations do not by themselves provide grounds of appeal under Article 8, which is concerned with private or family life, not education as such. The opportunity for a promising student

to complete his course in this country, however desirable in general terms, is not in itself a right protected under Article 8.”

7. The judge erred in law in finding Article 8 to be engaged. The proper course, if the claimant needs further time, is to make a fresh application for an extension.

Decision

8. The judge erred in law. Her decision is set aside. The claimant’s appeal is dismissed.

Signed

Date

Upper Tribunal Judge Taylor