



IAC-FH-CK-V1

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

Appeal Number: IA/14080/2013

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 12 November 2014

On 19 November 2014

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

**MR MD SHAMIM AHMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance by or on behalf of the appellant

For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh born on 10 October 1989. His appeal against the respondent's decision on 17 April 2013 to refuse leave to remain in the UK as a Tier 4 Student under paragraph 245ZX(c) and (d) of HC 395 (as amended) was dismissed by First-tier Tribunal Judge Sarsfield in a determination promulgated on 17 September 2013.
2. The hearing proceeded in the absence of the appellant or a legal representative. There was no explanation for the non appearance even

though both the appellant and PGA Solicitors had been notified of the hearing date by first-class mail on 16 October 2014.

3. The appellant did not lodge an application for permission to appeal against the judge's decision until a year later on 25 September 2014. The explanation given by PGA Solicitors on his behalf for the delay was that the appellant never received communication regarding his First-tier appeal. He first became aware of the decision on 4 September 2014 when he was arrested by an Immigration Officer. They contacted the Tribunal services to get the determination on 11 September 2014 and it confirmed that the determination was only sent to his representatives. They tried to communicate with his previous representatives for information about his appeal but were unsuccessful. For these reasons the appellant requested that his appeal be considered out of time.
4. Permission was granted by First-tier Tribunal Judge Andrew and it says the following in the second paragraph:

"The application for permission was made about a year later than it should have been. Nonetheless, having considered the grounds I am satisfied that there is an arguable error of law in the determination in that the judge gave no consideration to Article 8 despite this having been raised in the grounds of appeal."

5. The Secretary of State opposed the appellant's appeal in her response to the appellant's grounds under Rule 24. The respondent submitted that in granting permission Judge Andrew did not state the reason why she was treating the application as being in time. She simply did not engage with the issue but merely stated that there was an arguable error of law.
6. Mr Wilding developed this submission. He relied on the Upper Tribunal's decision in **Boktor and Wanis (late application for permission) Egypt [2011] UKUT 442 (IAC)** which was issued on 22 November 2011. The head note in **Boktor and Wanis** states as follows:

*"Where permission to appeal to the Upper Tribunal has been granted, but in circumstances where the application is out of time, an explanation is provided, but that explanation is not considered by the judge granting permission, in the light of **AK (Tribunal appeal - out of time) Bulgaria [2004] UKIAT 00201** (starred) and the clear wording of Rule 24(4) of the Asylum and Immigration (Procedure) Rules 2005, the grant of permission to appeal is conditional, and the question of whether there are special circumstances making it unjust not to extend time has to be considered."*

7. Mr Wilding relied on the Upper Tribunal's decision in **Wang (extension of time for appealing) Malaysia [2013] UKUT 343 (IAC)** issued on 18 July 2013. The Upper Tribunal held as follows:

“When considering an application for permission to appeal that is out of time, a judge must (i) consider all available material including the material on file and bear in mind the need for evidence to rebut the presumption of service, (ii) consider the extent of the delay and whether any explanation covers the whole of that period; (iii) give brief reasons for the discretionary decision to extend time or refuse to do so. The same principles apply whichever side is the applicant.”

8. Mr Wilding submitted that in this case the only explanation given was that his representative did not inform him of the determination. There was no evidence to back up this assertion.
9. Mr Wilding also relied on the Upper Tribunal’s decision in **Ogundimu (Article 8 - new rules) Nigeria [2013] UKUT 60 (IAC)** (18 February 2013). Head note 1 states:

“The expectation is that it will be an exceptional case in which permission to appeal to the Upper Tribunal should be granted where the lodging of the application for permission is more than 28 days out of time. Where, in such a case, a judge is minded to grant permission, the preferable course is to provide an opportunity to the respondent to make representations. This might be achieved by listing the permission application for oral hearing.”

10. Mr Wilding submitted that firstly time should not have been extended and in any event the respondent was not given the opportunity to make representations. Consequently he asked me not to extend time.
11. In any event, he relied on the Supreme Court case of **Patel [2013] UKSC 72** which states at paragraph 57 that: *“... 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.”*
12. I find that the decided cases relied on by Mr Wilding are pertinent to this appeal. The appellant’s application for an extension was one year out of date. The appellant’s assertion that he did not receive the determination from his solicitors was not backed up by any evidence. I also find that the appellant should bear some of the responsibility for this. I note that the determination was sent to his then solicitors because that was the address the appellant gave when he lodged his appeal against the respondent’s decision refusing his application. He did not provide his personal address. In the circumstances I would say that the appellant bore the burden to check with his solicitors or even the Tribunal or the UKBA whether a decision had been reached in his case. It does not appear that he did this.
13. On this evidence and in the light of the case law, I find that time should not have been extended and the judge was wrong to do so. Accordingly I do not extend time for the lodging of the appellant’s application for permission to appeal.

14. The judge who granted permission gave as her only reason her satisfaction that the judge who dismissed the appellant's appeal gave no consideration to Article 8 despite this having been raised in the grounds of appeal. In the light of the Supreme Court's decision in **Patel**, it is difficult to see how this appellant's appeal could succeed on Article 8.
15. My primary finding is that the appellant's application is out of time and the application is not admitted.

Signed

Date **17 November 2014**

Upper Tribunal Judge Eshun