IA 18192 2013

Upper Tribunal
(Immigration and Asylum Chamber)

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 21 June 2013	**On 24th June 2014**

Before

UPPER TRIBUNAL JUDGE WARR

Between

RAJA JAHANZAH NASIR
(No anonymity direction made)

Appellant

and

SECRETARY OF STATE

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Ms A Everett

DETERMINATION AND REASONS

1. The appellant, a citizen of Pakistan born on 24 October 1983 entered the United Kingdom on 22 September 2008 and was granted leave to remain as a student until 29 October 2012. He applied for further leave to

remain but this application was refused on 13 March 2013 as the appellant had no valid Confirmation of Acceptance for Studies and the respondent refused the application under paragraph 245ZX(c) and (d) of HC 395.

2. The appellant appealed and his appeal came before First-tier Judge Glossop as a paper case on 22nd August 2013. The judge records the appellant's submissions in paragraph 5 of the determination. The appellant had submitted an application without a CAS as his visa was running out. The respondent had written to say that if a problem was discovered with his application, such as a missing document, a caseworker would be in touch. It was his intention to send a CAS when he was told to do so. His college delayed giving him the CAS. He wanted his case considered and referred to human rights issues. He would be unable to complete his studies. Discontinuation of his studies and removal from the UK would involve irreparable loss in terms of time, money and energy invested.

3. Judge Glossop having summarised the evidence found as follows:

> "The appellant admits that he failed to supply his CAS. He says he did not have it to hand and was waiting for the respondent to ask for it, and he had some difficulty obtaining it from his college. The first ground is entirely without merit since the respondent's procedure for dealing with applications which have missing documents ought not to be exploited. It appears that the appellant has been unable to obtain a CAS from his college. He has not informed the tribunal the reason for this but it is evident that had the tribunal written to the appellant for the missing CAS he would have been unable to supply it. Acceptance for studies is fundamental for the issue of further leave to remain in this category and it is plain that the appellant is unable to qualify for the leave sought. He cannot satisfy the immigration rules."

4. The judge then turned to consider article 8. He concluded his determination as follows:

> "The appellant also appeals under article 8 of the ECHR claiming that his investment of time, energy and money in his education will be wasted if he is compelled to return to Pakistan. The appellant however has wholly failed to forward any evidence of his achievement so far or to explain what brought his studies to an end. In short, he has not set out the essential detail for establishing a private life in relation to his education in the UK. He has not attended the hearing to explain or assist the tribunal. I am therefore not able to find that his private life is engaged."

5. There was an application for permission to appeal and on 24 April, 2014 permission was granted by First-tier Judge PJM Hollingworth in the following terms:

> "The letter to the appellant from the respondent declined to vary leave and set out the decision pursuant to section 47 of the Immigration and

> Asylum and Nationality Act 2006. Although the position has now changed in respect of the timing of the making of the section 47 decision the effect and sequence of events in this case has been to deprive the appellant of putting forward arguments pursuant to article 8. An arguable error of law has thereby arisen."

6. The appellant lodged a witness statement and other documents on 13 June, 2014. It confirms that he paid a considerable amount of money to his college and claims his college license was suspended. He wished to enrol in a different college and wanted time to find a new sponsor and submit a new application.

7. It is plain that the appellant had notice of the proceedings since he refers to the date of hearing in his representations of which he was clearly aware. It is appropriate in all circumstances to proceed to deal with his appeal in his absence.

8. Ms Everett commented that the appellant appeared to be putting his case differntly to the way the case had been presented previously. It was puzzling that permission to appeal had been granted as Judge Glossop had clearly dealt with article 8. Ms Everett confirmed that the section 47 decision would be withdrawn as was the practice at the relevant time.

9. In relation to Article 8 the case of Patel v Secretary of State [2013] UKSC 72 presented significant obstacles for the appellant. The First-tier Judge had made no error of law in dealing with the matter as he did on the evidence presented to him. She noted that the appellant claimed to have been in correspondence with the Home Office but she had checked the database and no correspondence was recorded. She noted that the appellant appeared to have left matters to the last minute when making his application and the Home Office could not be blamed for that.

10. I reserved my decision. As Judge Glossop commented, the appellant has chosen not to attend an oral hearing before the tribunal. That is of course his right. However it means the tribunal is constrained to deal with the matter upon the limited material before it.

11. In this case permission to appeal was granted on the article 8 point only. It is rather a surprising grant since the judge plainly did consider article 8. Since the determination judgement has been given in Patel v Secretary of State and Ms Everett drew my attention to paragraph 57 where Lord Carnwath observed that it was important “to remember that Article 8 is not a general dispensing power." He concluded “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." The decision of Judge Glossop in relation to article 8 was plainly open to him

12. As the s 47 decision will have to be revisited by the respondent the appellant will have a further opportunity to put matters to the Secretary

of State should he wish. The appellant should note that the invalid s 47 decision does not affect the variation decision or the Tribunal's duty to deal with the variation decision: Adamally and Jaferi (section 47 removal decisions: Tribunal Procedures) [2012] UKUT 00414.

13. The decision of the First-tier Tribunal is not materially flawed in law and in those circumstances the appeal of the appellant is dismissed.

Appeal dismissed

Signed

Upper Tribunal Judge Warr

21 June 2014