



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

Appeal Number: IA/00318/2014

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke-on-Trent
On 9th April 2015**

**Decision & Reasons Promulgated
On 17th April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE COATES

Between

**MR TAHIR SHAFIQUE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born on 19th June 1983.
2. His immigration history shows that he first entered the United Kingdom on 1st April 2011 with entry clearance conferring leave to enter until 29th July 2013 as a Tier 4 (General) Student. On the day his leave expired, the Appellant submitted a combined application for leave to remain as a Tier 4 (General) Student Migrant under the points-based system and for a biometric residence permit. This application was refused by the Respondent on 5th October. Putting matters briefly, the application was refused because the Appellant submitted a CAS from a different college to that mentioned in his application. On his application form he stated that he wanted to

attend London School of Advanced Studies to complete a level 6 diploma in management. However, his CAS stated that he wanted to attend Northam College to complete an extended diploma in business and administration.

3. The Home Office wrote to the Appellant on 13th September 2013 (a copy of the letter is on the file) asking him to confirm which college and which course he wished to apply for. Home Office records show that no reply was received to that letter despite the fact that he was written to twice and given a final deadline within which to respond. After the deadline expired the refusal was issued.
4. The Appellant's former representatives submitted a Notice of Appeal on 18th October 2013 requesting an oral hearing. The Tribunal file shows that the correct fee was paid. There appear to be two different sets of Grounds of Appeal attached to the Notice of Appeal. One set of grounds is in large type and extends to eleven paragraphs. The other set of grounds is in a smaller typeface and extends to only nine paragraphs. The grounds are similar but not identical. None of the grounds explain why the Appellant submitted a CAS from a different college to that mentioned in his application. The grounds also purported to rely on Article 8 ECHR.
5. The Appellant's appeal came before Judge of the First-tier Tribunal P J M Hollingworth at Nottingham on 28th July 2014. The Appellant did not attend and there was no explanation for his absence. The determination refers to the fact that the appeal had been listed before Judge Hollingworth on an earlier occasion. A paper hearing had been requested but the Respondent's representative asked for an oral hearing and the appeal was adjourned for that reason. In view of the Appellant's unexplained absence and in the absence of any evidence to rebut the assertions contained in the Respondent's refusal letter the judge was not satisfied that the requirements of the relevant Rules had been met. Similarly, in the Appellant's absence, the judge was not satisfied that his claim under Article 8 had been made out.
6. The Appellant's former representatives, SZ Solicitors, wrote to the Tribunal on 25th July 2014 (three days prior to the appeal hearing) stating that they were no longer representing the Appellant and that any future correspondence should be addressed to the Appellant at his residential address in Derby. The letter made no reference to an appeal bundle or any wish on the Appellant's behalf to have the matter determined on the papers.
7. The Appellant submitted an application for permission to appeal which was received by the Tribunal on 9th September 2014. The grounds in support argued that the First-tier Judge had failed to take into account a witness statement which the Appellant had submitted in support of his appeal. He also pointed out that he was not prohibited from requesting a paper hearing despite the fact that he had paid the full fee of £140 for an oral hearing previously. The Appellant is quite right in stating that if he changes his mind and wishes to rely on written evidence rather than personal attendance then that is a choice which is open to him.
8. The Respondent's representative submitted a Rule 24 response on 11th November 2014. The response argued that the First-tier Judge directed himself appropriately and made no error of law. The grounds point out that the Appellant did not attend the appeal hearing, the matter having previously been adjourned. No argument was

advanced on behalf of the Appellant. The Respondent's records revealed that he did not reply to the letter sent to him seeking confirmation as to which course he proposed to follow.

9. Permission to appeal was granted in the First-tier Tribunal by First-tier Tribunal Judge O'Garro on 13th October 2014. Judge O'Garro considered that the Appellant had given an explanation for the late filing of his appeal and that there were special circumstances which merited an extension of time. However, the judge failed to identify an arguable error of law. Accordingly, when the matter came before Designated Judge Garratt for an error of law hearing in the Upper Tribunal, the Designated Judge decided to refer the matter back to Judge O'Garro because, although she had extended time, she had failed to identify an arguable error of law.
10. On 16th December 2014 Judge O'Garro issued a further decision granting permission to appeal to the Upper Tribunal. This time, Judge O'Garro explained that in her view the Appellant had provided arguable grounds for appealing, namely his assertion that the First-tier Judge had failed to take into account his witness statement.
11. Thus the matter came before me in the Upper Tribunal on 9th April 2015. The Appellant failed to attend and no explanation was offered. I am satisfied from the file that notice of hearing was duly sent to him at the correct address by first-class post on 23rd February 2015. The Respondent was represented by Mr McVeety who relied on a further Rule 24 response filed on behalf of the Respondent and dated 9th January 2015.
12. Mr McVeety produced a copy of the UKBA computerised records which shows that a letter was sent to the Appellant as mentioned above asking him to clarify which course he wished to pursue. The records also show that despite a reminder and a deadline being given there was no response from the Appellant.
13. The Appellant has submitted a witness statement dated 21st May 2014 and a letter dated 17th September 2013 which purports to confirm that the Appellant wished to pursue the course at Northam College rather than the London School of Advanced Studies. The letter appears to be unsigned and is headed "Computer Copy". There is nothing to show that these documents had been submitted to the Tribunal prior to the appeal hearing before Judge P J M Hollingworth on 28th July 2014. The wording of the determination strongly suggests that there was no evidence in documentary form from the Appellant at the appeal hearing. Despite the fact that the Appellant apparently still lives in Derby, which is within easy travelling distance from Stoke-on-Trent, the Appellant failed without explanation to attend the error of law hearing in the Upper Tribunal. If, which I do not accept, the First-tier Judge failed to take into account a witness statement and/or other documents which the Appellant had submitted, that the error would be immaterial because the Appellant has failed to deal with the original reasons for refusal.
14. I am well aware that time spent studying in the UK can, in theory at least, give rise to a private life within the terms of Article 8 ECHR, but a grant of leave to enter or remain as a student is time limited and the expectation is that the student will return home at the end of the course of study. The Appellant has adduced no evidence to explain why Article 8 is engaged in this appeal and in the absence of any such evidence I find that the Article is not engaged.

NOTICE OF DECISION

15. In conclusion, I find that the making of the decision by the First-tier Tribunal did not involve the making of a material error on a point of law. I direct that the determination shall stand.

No anonymity direction is made.

Signed

Date 14th April 2015

Deputy Upper Tribunal Judge Coates