



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: IA/02957/2014

THE IMMIGRATION ACTS

**Prepared at Field House
On 19 December 2014**

**Decision & Reasons
Promulgated
On 13 January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR JABER AHMED

Respondent

Representation:

For the Appellant: Mr P Deller, Senior Presenting Officer (on 22 September 2014)

For the Respondent: Mr Aupoo, Legal Representative, SEB Solicitors (on 22 September 2014)

DECISION AND REASONS

1. In this determination the Appellant is referred to as the Secretary of State and the Respondent is referred as the claimant.
2. The Claimant, a national of Bangladesh, dated of birth 8 December 1988, appealed against the Secretary of State's decision dated 15 November 2013 to refuse his application dated 17 October 2013 for leave to remain as a Tier 4 (General) Student Migrant and to

make removal directions under Section 47 of the Immigration, Asylum and Nationality Act 2006 as amended.

3. The appeal came before First-tier Tribunal Judge Harrington who, on 18 July 2014, allowed the appeal on human rights grounds (Article 8) and dismissed the appeal under the Immigration Rules. Permission to appeal that decision was given to the Secretary of State by First-tier Tribunal Judge Heynes on 5 August 2014.
4. In a determination promulgated 20 October 2014 I found there was an error of law made by the judge and accordingly the original Tribunal decision could not stand. I gave directions but unfortunately the file was only provided to me as a paper case on 19 December 2014. It is now being remade upon the papers and the findings of fact set out by the judge as well as the finding by the judge on the reliability of the Claimant's evidence stand.
5. There is no challenge that the Claimant did not meet the requirements of either paragraph 276ADE or Appendix FM of the Immigration Rules.
6. The purpose of the Claimant's application was to enable him to stay to undertake a BA in management. The period of the course was intended to be from 14 October 2013 to 19 December 2014. That application was refused on 15 November 2013 and the Claimant having appealed that decision remained in the United Kingdom pursuant to leave under Section 3C of the Immigration Act 1971.
7. As a fact at the time the matter was considered by the judge in July 2014 there was but a few weeks or so before the Claimant would complete the BA management course and complete his dissertation. Also the Claimant's final exams have now taken place, his dissertation has been submitted, the Claimant expects success in those exams and would now like to remain to undertake a MBA in business management, a further course which has yet to be found.
8. The realities of the judge's decision in allowing the appeal under Article 8 were essentially on a conclusion that it was not proportionate to remove the Claimant from the UK before the end of his current course of study.
9. Having considered the judge's reasoning at paragraph 32 to 37 it is difficult to understand what could have been the reasons why the judge found that there was a compelling case other than by working backwards from the conclusion that the judge thought the Claimant ought to be allowed to complete his course in the United Kingdom. Her very reasoning is demonstrated by her conclusion

that if the Claimant had already completed his course she would not have found his removal disproportionate.

10. It seems to me that the judge's approach to the case law is addressing the question of whether it is disproportionate in the judgment of the judge to remove the Claimant rather than whether there are circumstances outside of the Rules unaddressed by the Rules which indicate that such a decision is required because of exceptional circumstances or because refusal would lead to an unjustifiably harsh or disproportionate outcome.
11. A student who has been in the United Kingdom a number of years might reasonably be expected to understand the Rules and the requirements of the Rules because they are so central to a student's presence. Yet in this case it is unarguable that the problem faced by this Claimant was entirely of his own making in failing to provide the required documentation. It is of interest that the judge noted the Claimant wished to undertake an MBA course starting in January 2015 but that does not feature in her reasoning for allowing the appeal under Article 8 of the ECHR. It is plainly not the case that the judge was allowing the appeal in order to enable the MBA course to next be undertaken.
12. In a way, as I have previously found, it is hard to see on what basis the Claimant's private life is to be given particular respect when in the light of the case law there is no general expectation of a basis to remain unlike that which may typically arise in family life claims where relationships are more unique and cannot be replicated once the individual leaves the United Kingdom. In contrast college, friends, acquaintances made during a student's time in the United Kingdom are inevitably on their own basis likely to come to an end simply on the completion of studies and therefore the extent to which those relationships are maintained at a distance is inevitably going to be different.
13. In the circumstances of this case, first, I do not find the difficulties that the Claimant faced as a result of his own failings indicated that it was an exceptional case. Furthermore, the fact that delay has occurred does not seem to me to be any exceptional or compelling circumstances to show the Secretary of State's decision was disproportionate.
14. Secondly, the fact he has paid for his education is no more than would be expected in any event and he has of course now completed his education; which he was seeking to obtain on the basis of the application that forms the basis of this appeal.
15. Thirdly, the fact that he has undertaken the majority of his course, indeed the whole of his course, while awaiting the outcome of this

appeal, may not be of his making in one sense but it is a delay caused by him exercising his appeal rights.

16. In the circumstances I find that the public interest particularly in relation to a properly managed system of control is important and as demonstrated by provisions of s.117A and B NIAA 2002 as amended. The Original Tribunal's decision did not stand. The following decision is substituted.
17. The Claimant's appeal is dismissed on Article 8 ECHR grounds.

No anonymity direction is made.

Signed
2014

Date **19 December**

Deputy Upper Tribunal Judge Davey

I have dismissed the appeal and therefore there can be no fee award.

Signed
2014

Date **19 December**

Deputy Upper Tribunal Judge Davey