IAC-PE-SW-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/09241/2014
& IA/09242/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 20th January 2015	**On 21st January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

MR GURCHARAN SINGH
& MRS KULWINDER KAUR
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Claimant

Representation:
For the Appellant: Ms Momoh Counsel instructed by Chipatiso Solicitors
For the Respondent: Mr Shilliday, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellants, Mr Gurcharan Singh date of birth 2nd June 1980 and Mrs Kulwinder Kaur date of birth 2nd June 1980, are citizens of India. The Appellants are husband and wife.

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2. I have considered whether it is necessary to make an anonymity direction in these proceedings. Having considered all the circumstances I do not consider it necessary to make such direction.

3. This is an appeal by the Appellants against the determination of First-tier Tribunal Judge K S H Miller promulgated on 20 October 2014, whereby the judge dismissed the Appellant's appeal against the decisions of the Respondent dated 31st January 2014 to refuse the Appellants further leave to remain in the United Kingdom and thereupon to remove them to India.

4. By decision made on 3 December 2014 permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge McDade. In granting permission the judge indicates that it is arguable error of law that the judge at first instance failed to consider Article 8 correctly in light of the case of CDS (PBS: "available": Article 8) Brazil [2010] UKUT 00305 and failed to consider that the application was not for indefinite leave to remain but merely to enable the first Appellant to complete his course of study and for his dependant, the second Appellant, to remain with him.

5. The first appellant had come to the United Kingdom as a student in January 2010 with the second appellant coming later as his dependent. It appears that having commenced upon a course of study, the first college and then the second college, at which the first appellant was studying, had both closed down.

6. It was noted within the determination that despite assurances given to the ECO prior to original entry as to the financial means to enable the first appellant to complete his studies, it was necessary for the second appellant to come to the United Kingdom to work to support the first appellant to enable him to continue his studies. In order to complete his studies the first appellant would have to register at a further college paying the required tuition fees and to meet the rules would require sufficient funds to maintain himself and the second appellant.

7. The grounds of appeal accept that the appellants did not have the financial means to find an alternative college or the financial means to continue to support themselves in the UK at the time of the decision or hearing. The judge noted in paragraph 23 that the appellants have no money at all and are now dependent upon the charity of friends and relatives. The appellants did not have the funds to meet the requirements of the rules to fund another college course or to maintain themselves. (see ground 1)

8. Ground 1 goes on to argue that the first appellant was only seeking limited leave sufficient to enable the first appellant to complete his studies. In ground one it is then asserted that a grant of leave sufficient to enable the first appellant to complete his course of study "*would represent a proportionate remedy for the breach".* That seems to ignore the fact that the first appellant does not have the funds for the tuition fees.

9. The grounds argue that the decision under Article 8 in relation to private life is unreasonable and unlawful. The appellant seeks to rely upon the case of CDS (PBS: "available": Article 8) Brazil [2010] UKUT 00305.

10. In CDS the appellant had the funds necessary to enable her to complete a course available both at the time of the application and at the time of decision. In respect of the present appellants there is no suggestion that they have the available funds.

11. I also draw attention to the case of Patel [2013] UKSC 72 paragraph 57 where it is made clear that the opportunity of an individual to complete a course in the UK is not of itself in general terms a right protected by Article 8. Paragraph 57:-

> 57. 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 rights. The merits of the decision not to depart from the rules are not reviewable one appeal: section 86 (6). One may sympathise with Sedley LJ's call in Pankina for "common sense" 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 bother 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.

12. The appellants' stated intention is to return to India once the first appellant has obtained a good education. The Rules provide a means by which a person can complete a course of study. The appellants simply cannot meet the requirements of the rules. There is no right to remain in the UK to be educated when the Appellants do not have the means to support themselves.

13. Even if private life were engaged it has to be noted that the rules provide a means by which an individual can complete their education once started in the United Kingdom but that is dependent upon an individual having the financial means to support themselves. It is not a breach of someone's private life, if they wish to study in United Kingdom to expect them to be able to support themselves.

14. In the light of that even if private life were engage on the facts as presented the main aspect of private life relied upon relates to completing the education of the first appellant but that cannot be done without the funds. On the basis of the evidence the judge was entitled to find that even if private life were engaged on the facts and the decisions constitute a breach of such, the decision will be in accordance with the law and for the purposes of maintaining immigration control as an aspect of the economic well-being of the country.

15. As a final issue consideration the judge was entitled to find that the decisions were proportionately justified. In light of the fact that the rules enable an individual to complete their course of study in the United Kingdom provided they have the financial means, expecting appellant to meet those rules would in all the circumstances be reasonable. Accordingly any decision to refuse further leave and remove the appellants would in the circumstances be proportionate. That was a finding open to the judge on the facts.

16. Within the determination the judge has referred to the fact that the first appellant's English was poor. The judge goes on to suggest that she would not be satisfied that the appellant could complete the course. Whatever the judge said with regard to the English of the first appellant, it does not alter the fact that the appellants cannot complete the educational course as they do not have the means.

17. The judge has taken account of all the evidence. She has considered the unfortunate circumstances that the appellants find themselves in. However that does not alter the fact that the rules provide a route by which the first appellant could remain in the United Kingdom to complete his education. The appellants cannot meet the immigration rules. The judge has clearly considered all the relevant facts including that they entered the United Kingdom on a temporary basis and that the reason for entry can no longer be attained. The judge was entitled in the circumstances to find that the decisions in respect of the appellants were proportionately justified

18. Accordingly there is no arguable material error of law in the determination. I uphold the decision to dismiss these appeals on all grounds.

Signed　　　　　　　　　　　　　　Date **20th January 2015**

Deputy Upper Tribunal Judge McClure