Upper Tribunal
(Immigration and Asylum Chamber) **Appeal No: IA/10859/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 20 November 2015	**On 25 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

MR MOHSIN JAMIL
(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 S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision, promulgated on 1 June 2015, of First-tier Tribunal Judge Meyler (hereinafter referred to as the FTTJ).

Background

2. The appellant entered the United Kingdom on 2 April 2011 with leave to enter as a Tier 4 (General) migrant, valid until 31 May 2012. He extended his leave on the same basis until 29

December 2014. On 27 December 2014, the appellant applied for leave to remain in the United Kingdom, outside the Immigration Rules. He sought a short period of leave in order to enable him to re-take an IELTS examination and thereafter obtain a Confirmation of Acceptance of Studies (CAS).

3. The appellant's application was refused, on 2 March 2015, on the basis that he was seeking a variation of leave for a purpose not covered by those Rules. In addition, the Secretary of State commented thus; *"Grants of such leave are rare and are given only for genuinely compassionate reasons."* It was said that the appellant could pursue his studies in Pakistan or make an application for entry clearance to return to the United Kingdom. A decision was also made to remove the appellant from the United Kingdom.

4. In his grounds of appeal, the appellant stated that it would be disastrous if he had to return to his country without completing his studies; that his private life was adversely affected by the respondent's decision and there were compelling and compassionate circumstances which meant that the Secretary of State should have exercised her discretion in his favour.

5. The FTTJ considered the appellant's appeal without a hearing, as requested. He concluded that the appellant was not entitled to appeal the refusal of his application for an "*extension of leave as a Tier 4 (General) Student*" because such decisions no longer attracted a right of appeal as of 20 October 2014. The FTTJ made reference to The Immigration Act 2014 (Commencement No.3; Transitional and Saving Provisions) Order 2014.

6. The grounds of application argue, in essence, that the FTTJ erred in finding there was no valid appeal before him because the appellant had not made a points-based application.

7. FTTJ Nicholson granted permission on the above basis, commenting that while it was not apparent that the appellant had any prospect of success on a human rights appeal, he was entitled to have his appeal heard.

8. The Secretary of State lodged a Rule 24 response on 3 September 2015. The respondent stated that force was seen in the appellant's grounds, however owing to the absence of a file, in order to protect the Secretary of State's position, the appeal was opposed. The issue of materiality was also raised, in view of the basis of the application.

Error of law

9. At the hearing before me, the appellant did not appear and nor

was he represented. I put the matter back in the list and further delayed the hearing, however no message was received from the appellant. At 1440 hours, I decided to proceed with the appeal in the absence of the appellant for the following reasons. The notice of hearing was posted to the appellant by first class post on 2 November 2015, to the address notified by him on form IAFT-4. The said notice was not returned to the Tribunal by the Royal Mail. I also took into consideration the standard direction provided on the face of the notice of hearing, that is "*If a party of his Representative does not attend the hearing the Tribunal may determined the appeal in the absence of that party.*" I was therefore satisfied that the appellant had been given notice of the hearing and the consequences of not attending the hearing.

10. I therefore heard submissions from Mr Whitwell, who conceded that the FTTJ had erred in concluding that the appellant was not entitled to appeal. However, he argued that the appellant's application for more time to obtain a CAS did not come within the requirements of Appendix FM or paragraph 276ADE of the Rules. It was open to the appellant to apply for further leave to remain as a Tier 4 migrant after the Upper Tribunal decision or, in the alternative, to make an application for entry clearance in the same capacity. With regard to the respondent's exercise of discretion, there was no fault to be attributed to the Secretary of State regarding the appellant's failure to pass his IELTS. There were no compelling circumstances. The appellant had been residing in the United Kingdom since 2011 and had sufficient time to obtain an English language certificate. He invited me to dismiss the appeal.

11. I decided that the FTTJ had made a material error of law in declining to entertain the appellant's appeal on the erroneous basis that he had made an application under Tier 4 after 20 October 2014, which from that date no longer attracted a right of appeal. In fact the appellant made an application for further leave to remain, for a purpose outside the Rules. While the FTTJ granting permission rightly noted the lack of any apparent prospects of success, I considered the appellant had been completely denied a hearing, which is a material error, regardless of the ultimate outcome of his appeal.

12. I accordingly set aside the decision of the FTTJ in its entirety and proceeded to remake the decision immediately. In doing so, I had regard to the appellant's application to the respondent, his grounds of appeal against the refusal of his application as well as his grounds of appeal against the decision of the FTTJ and Mr Whitwell's submissions. At the end of the hearing, I dismissed the appeal and now give my reasons.

13. The appellant sought a short period of further leave to remain

because he had been unsuccessful in his IELTS. That application was made on 27 December 2014, however the appellant has been silent as to whether he has been able to subsequently pass an English language test. In his grounds of appeal, the appellant refers to the private life he has built up in the United Kingdom over a period of around 4 years. He mentions his friendships and having acclimatised to this country. In addition, he refers to the prospect of returning to his country of origin without completing his studies as a "*disaster*."

14. No argument was put that the appellant could meet the requirements of the Rules relating to family or private life and nor did the particulars which he provided give any indication that he met those Rules.

15. The reasons put forward by the appellant do not, in my view, amounting to compelling reasons for considering his circumstances outside the Rules. Nonetheless, for completeness, I have gone on to consider Article 8 in line with the test in Razgar notwithstanding that no application was made in relation to the appellants' human rights.

16. The appellant has built up a private life in the United Kingdom over the four or more years he has been residing here. I therefore find that the decision of the respondent would have consequences of such gravity as to engage the operation of Article 8.

17. I accept that such interference is in accordance with the law, given that the appellant failed to meet the requirements of the Rules to extend his stay and that there is a necessity for a system of immigration control. The appellant has not provided any compelling reasons, which ought to have merited a positive exercise of the Secretary of State's discretion and accordingly the respondent's refusal to do so does not amount to an unlawful decision.

18. In assessing the public interest under Article 8(2), I have had regard to the provisions of section 117B of the Nationality, Immigration and Asylum Act 2002 as amended by section 19 of the Immigration Act 2014 and have attached weight to them. As indicated above, the maintenance of effective immigration control is in the public interest. I have borne in mind the importance to the economic well-being of the United Kingdom that persons seeking to enter or remain are able to speak English. In this instance, the appellant has not demonstrated that this is the case. That his studies were ended owing to his failure to pass an IELTS does not assist his case. There was no evidence before me in terms of financial independence, however there is no reason to believe that the appellant, who states that his

studies are funded by his parents, is unlikely to be financially independent or would be a burden on taxpayers.

19. I have also considered the fact that the appellant came to the United Kingdom in a temporary capacity in order to study; to some extent he has achieved that goal. The appellant would have had no expectation of being permitted to remain here permanently. While the appellant may well have made friendships here, these could continue by remote means; new friendships could be forged and old friendships re-established in Bangladesh. In addition, there is no bar to the appellant seeking to return to the United Kingdom in order to study, should he meet the requirements of the Rules.

20. I have been guided by the conclusions of the Upper Tribunal in Nasim and others (Article 8) [2014] UKUT 00025 (IAC), in relation to the judgments of the Supreme Court in Patel and Others v SSHD [2013] UKSC 72, serving to refocus attention on "*the nature and purpose of Article 8 of the ECHR, and in particular to recognise that Article's limited utility in private life cases that are far removed from the protection of an individual's moral and physical integrity.* "

21. Considering all the evidence before me, I conclude that the circumstances of the appellant does not outweigh the respondent's concerns as to the maintenance of an effective immigration control and that the decision does not amount to a disproportionate interference with the appellant's private life.

22. The appeal is dismissed.

Conclusions

(1) The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

(2) I set aside the decision of the FTTJ.

(3) I re-make the appeal by dismissing it.

Signed: Date: 22 November 2015

Deputy Upper Tribunal Judge Kamara