



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

Appeal Number: IA/24924/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 14th April 2015**

**Decision & Reasons
Promulgated
On 21st May 2015**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**MOHAMMAD SOHAIL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs A Javed, Counsel

For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Grimshaw made following a hearing at Bradford on 26th August 2014 at which the appellant did not attend.

Background

2. The appellant is a citizen of Pakistan. On 9th April 2014 he made a combined application for leave to remain in the UK as a Tier 4 (General) Student but was refused on the grounds that he did not have a CAS. His sponsor had confirmed to the respondent that they had withdrawn the offer of sponsorship and accordingly he failed to meet the requirements of paragraph 116C of Appendix A to the Immigration Rules. Furthermore he did not meet the minimum requirements to show competence in the English language at the appropriate level.
3. The judge recorded that the appellant had made an application prior to the hearing for an adjournment which had been refused by the Resident Judge. His counsel sought an adjournment on his behalf but, since no further medical evidence was before her, and no further correspondence had been received she refused his request and dealt with the appeal on the basis of the submissions made. She concluded that he could not meet the requirements of the Rules and that the UK would not be in breach of its obligations under Article 8 of the ECHR were the refusal to be maintained. Accordingly she dismissed the appeal.
4. The appellant sought permission to appeal in lengthy grounds which was initially refused by First-tier Tribunal Judge Ransley but subsequently granted by Upper Tribunal Judge Warr. Essentially the appellant argues that the judge had failed to take into account medical evidence which was before her confirming that he was not able to attend the hearing because of his back pain. He had also served a bundle in accordance with directions. Second, the judge had failed to consider the case of SSHD v Rodriguez [2014] EWCA Civ 2 which held that the respondent had to act reasonably and fairly. Third, she had failed to consider the Supreme Court decision in Patel and Alam & Anwar v SSHD [2013] UKSC in which it was said that a near-miss was capable of enhancing an individual's case. Finally the judge had erred by not properly considering Article 8 and the case of CDS (PBS "available" Article 8) Brazil [2010] UKUT 305 and other relevant Article 8 cases such as Gulshan and Razgar.

Findings and Conclusions

5. There is no error of law in this decision. The fundamental point is that the appellant cannot meet the requirements of the Immigration Rules. He does not meet the required standards in respect of knowledge of the English language and he does not have a valid CAS. His case was bound to fail.
6. First the faxed medical report dated 28th August 2014 does not say, as alleged in the grounds, that the appellant was unable to attend the court hearing due to his back pain but that the doctor had been told by him that he was unable to attend the court hearing due to his back pain. Even if the judge had had that letter before her it would have made no difference to her decision.

7. The other grounds are wholly without merit. The case of Rodriguez is irrelevant since this is not a case which failed because of a shortfall in the specified evidence. Patel is irrelevant - this is not a near-miss case. The remaining grounds challenging the judge's conclusions in respect of Article 8 have no substance because on any view it could never have succeeded on Article 8 grounds.

Notice of Decision

8. The appellant's appeal is dismissed.
9. No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Taylor