



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/33013/2014

THE IMMIGRATION ACTS

Heard at Field House
On 5 June 2015

Determination Promulgated
On 19 June 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Secretary of State for the Home Department

Appellant

and

Asif Butt

[No anonymity direction made]

Claimant

Representation:

For the claimant:

Mr A Jafar, instructed by Lee Valley Solicitors

For the appellant:

Ms A Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the appeal of the Secretary of State against the decision of First-tier Tribunal Judge Peart promulgated 17.2.15, allowing on private life grounds the claimant's appeal against the decision of the Secretary of State, dated 4.7.14, to refuse his application made on 29.4.14 for leave to remain in the UK on grounds of private life. The Judge heard the appeal on 10.2.15.
2. First-tier Tribunal Judge Lambert granted permission to appeal on 25.4.15.

3. Thus the matter came before me on 5.6.15 as an appeal in the Upper Tribunal.

Error of Law

4. For the reasons set out herein, I find that there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Peart should be set aside and remade. I do so by dismissing the appeal.
5. It is evident that Judge Peart either misunderstood or lost sight of the nature of the application made by the claimant, being caught up in the issue arising from the refusal decision as to whether the appellant had any right of appeal.
6. On 9.4.11 the claimant entered the UK with leave as a Tier 4 (General) student migrant until 30.4.14. On 8.5.13 the Secretary of State wrote to him, curtailing his leave to 7.7.13, because the licence of his educational sponsor, Stratford College London, was revoked on 24.1.13. He was expected to leave the UK or submit a fresh application before the expiry of the curtailed leave. The claimant claimed that he did not receive the curtailment letter. Nevertheless, he made a new application within the original period of leave, but only for leave to remain on the basis of private life, not as a student.
7. The Secretary of State refused his application, considering in the process that as his leave had expired (by reason of the curtailment) he had no right of appeal, as the decision was not an immigration decision.
8. Judge Peart set out at length why the Secretary of State failed to discharge the burden of demonstrating that the claimant had received the curtailment letter.
9. In her grounds of application for permission to appeal the Secretary of State accepts that this finding was open to the judge on the facts and no challenge is raised in respect of it.
10. It follows that if the Secretary of State could not prove that the curtailment letter had been received by the appellant, the curtailment decision was not effective and his leave continued to run its course until 30.4.14. Given that he made a new application on 29.4.14, within that period of extant leave, he had a right of appeal against the decision of 4.7.14.
11. However, Judge Peart failed to recognise that on the chronology the claimant's original student leave expired on 30.4.14. Even though the claimant was apparently unaware of the purported curtailment of his leave, he made no new application for leave to remain as a student. The application he in fact made on 29.4.14, the day before the expiry of his original student leave, was for leave to remain in the UK on grounds of private life, which is clearly stated in the refusal letter dated 4.7.14. He never sought leave to remain further as a student.
12. It follows that the judge's finding at §10 that the claimant should be given the opportunity to find another sponsor was neither necessary nor justified. It is clear

from §4 of the decision that the judge's attention focused solely on the curtailment letter, which was incidental to the claimant's application and the refusal decision under appeal. The judge failed entirely to deal with the appeal against the Secretary of State's decision on the application actually made by the claimant, namely leave to remain on the basis of private life. The judge failed to address the issue of private life.

13. In the circumstances the decision of the First-tier Tribunal was entirely flawed, failing to address the issue in the appeal, and must be set aside and remade. I made that finding at the hearing before me and invited further submissions as to the remaking of the decision.
14. For the claimant, Mr Jafar explained that he wanted to remain as a student and had approached other colleges, but could not get any sponsorship as he could not produce his diploma from Stratford College, as they demanded £2,000 from him.
15. The primary reason for refusal of the claimant's application for leave to remain on the basis of private life is set out in the refusal decision dated 4.7.14. The claimant could not meet the requirements of paragraph 276ADE of the Immigration Rules. He had only been in the UK since 2011 and had spent the vast majority of his 32 years in Pakistan. The Secretary of State considered that he could not demonstrate that he had lost all ties, including social, cultural and family, with Pakistan. That was the correct test at the date of decision. As paragraph 276ADE is presently drafted, the claimant has to demonstrate that there would be very significant obstacles to his integration into Pakistan. There was nothing before the First-tier Tribunal to demonstrate that the claimant met either version of paragraph 276ADE(1)(vi). It was not submitted to me that the claimant could meet the requirements of the Immigration Rules.
16. The Secretary of State also found that there were no exceptional or compelling circumstances insufficiently recognised in the Immigration Rules to grant leave to remain in the UK outside the Rules on the basis of article 8 ECHR, on the basis that it would be unjustifiably harsh to require him to leave the UK. Whilst I have some sympathy for the claimant's plight, on the assumption that he has been a genuine student, given that he did not make an application for leave to remain as a student, those matters are not relevant to the issue in the appeal, being his application for leave to remain on the basis of private life. Since he effectively had extant leave, it was open to him to make a student leave application prior to the expiry of that leave on 30.4.14.
17. The claimant's private life was developed whilst he was a student. In Nasim and others (article 8) [2014] UKUT 00025 (IAC), the Upper Tribunal considered whether the hypothetical removal of the 22 PBS claimants, pursuant to the decision to refuse to vary leave, would violate the UK's obligations under article 8 ECHR. Whilst each case must be determined on its merits, the Tribunal noted that the judgements of the Supreme Court in Patel and Others v SSHD [2013] UKSC 72, "serve to re-focus 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." There was nothing in

this case to suggest that the decision amounted to a grave interference with the claimant's moral and physical integrity.

18. Further, by reason of section 117B(5) of the 2002 Act, little weight should be accorded in any article 8 ECHR proportionality balance exercise to a private life established by a person at a time when the person's immigration status is precarious. As recently held in AM (s117B) Malawi [2015] UKUT 0260 (IAC) a person's immigration status is precarious if their continued presence in the UK will be dependent upon their obtaining a further grant of leave. Section 117B(1) also provides that the maintenance of effective immigration control is in the public interest. The claimant had no legitimate expectation of being able to remain in the UK beyond his period of study. If he did not intend to continue to study in the UK, as evidenced by his failure to apply for further leave to remain as a student, he should have returned to Pakistan. He had no legitimate expectation of being able to remain in the UK solely by reason of the fact that he had been here as a student since 2011. The application as made was doomed to failure on the facts of this case and I have no hesitation in dismissing the appeal on all grounds.

Conclusions:

19. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I re-make the decision in the appeal by dismissing it on both immigration and human rights grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

3 September 2015

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed and thus there can be no fee award.

A handwritten signature in black ink, appearing to read 'J. Pickup', written in a cursive style.

Signed

Deputy Upper Tribunal Judge Pickup

Dated

3 September 2015