Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/35098/2014

THE IMMIGRATION ACTS

Heard at: Manchester
On: 17th August 2015

Decision & Reasons Promulgated
On: 20th August 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Mr Waseem Rasheed
(no anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms Hashmi, Mamoon Solicitors
For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Pakistan date of birth 16 January 1986. He appeals with permission[1] the decision of the First-tier Tribunal (Judge Lloyd-Smith) to dismiss his appeal against a decision to refuse to vary his leave and to remove him from the United Kingdom pursuant to s47 of the Immigration Asylum and Nationality Act 2006.

2. The matter in issue in the appeal to the First-tier Tribunal arose as

[1] Permission granted on the 16th February 2015 by First-tier Tribunal Judge Chohan

a result of paragraph 245XH (ha) of the Immigration Rules. This stipulates that Tier 4 (General) Student migrants may not spend longer than five years studying at or above degree level in the UK. The Appellant in this case had first been granted leave as a Tier 4 migrant on the 26th April 2010. He had since then been studying at or above degree level, having attracted various extensions to his original visa. His last application to vary his leave had been made on the 13th August 2014. He requested further leave in order to take a NQF level 7 course, due to commence on the 8th September 2014 and to end on the 29th October 2015. The application was refused on the basis that this would take him over the five years.

3. On appeal the Appellant relied on a letter dated 5th September 2014 from his Tier 4 sponsor, the Manchester College of IT & Business. This stated that in view of the academic progress he had already made in earlier courses, in particular four modules studied at the Manchester City College of Technology, it was agreed that he could be put on the "fast track", enabling him to finish his course on the 20th April 2015. It was further submitted that the Appellant had been unable to gain from any of the earlier courses he had undertaken because the colleges had all had their licences revoked, and in one instance the Home Office had sent his passport to the wrong address, resulting in a long delay.

4. Judge Lloyd-Smith dismissed the appeal on all grounds.

5. The grounds of appeal are that the determination of the First-tier Tribunal contains two errors:

   a) there had been a failure to take relevant evidence into account, viz the letter confirming that the Appellant could be put on the "fast track" and finish the course early

   b) there was a material unfairness in that the Respondent had in effect lost the Appellant's passport, resulting in a delay which took up one and half years of the Appellant's five years of study.

Error of Law

6. It is not at all apparent from the record of proceedings or the determination itself that the 'fairness' argument was ever put to the First-tier Tribunal. Moreover the matter has never been put to the Secretary of State. As Ms Hashmi conceded, no application has ever been made asking the Secretary of State to exercise her discretion not to apply paragraph 245XH (ha). It is difficult to see how the First-tier Tribunal can have been expected to remedy, on fairness grounds, a refusal to exercise a discretion where there had never been a request made that the Respondent depart from the Rules.

7. As to the suggestion that this determination overlooks the letter of the 5th September 2015 this is entirely misconceived. It is clear from paragraph 8 of the determination that it was in the forefront of the Appellant's case and that Judge Lloyd-Smith understood this:

> "… in response the appellant submitted a letter from Manchester College of IT and Business which states that given the academic progress made on his previous course he would be "put onto fast track" for the diploma course and complete the course by the 20th April 2015"

8. What the First-tier Tribunal does, in its evaluation, is to reject the claim that the Appellant could be placed in the "fast track" at all. Four reasons are given. First, the fact that the CAS says otherwise; second, had his academic progress been sufficient to place him on the "fast track" this would have been reflected in the CAS from the outset; third, the convenient timing of the "fast track" course ending shortly before he would reach the five year point; fourthly because there would appear to be no justification for him being able to skip half the level 7 course on the basis of "academic progress":

> "[11]. The CAS that has been supplied clearly gives the course length to be 8th September 2014 until 29th October 2015. I do not accept that the course can be completed conveniently 2 days before the 5 year period ends. I find this particularly difficult to accept given the fact that the appellant, after 4 years of studies, has failed to obtain a single qualification. The college, on issuing the CAS would have known of his background and could have placed him on a fast track then if they deemed it appropriate. To reduce the length of course by effectively half is not something that I accept as being reasonable or likely".

9. The grounds submit that Judge Lloyd-Smith had failed at paragraph 11 to apprehend that the college had placed him in the "fast track". There was no such failing. She just did not accept it to be credible that it had.

Decisions

10. The determination contains no error of law and it is upheld.

Deputy Upper Tribunal Judge Bruce
17th August 2015