IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/35400/2013

THE IMMIGRATION ACTS

Heard at Field House
On 16 January 2015

Determination Promulgated
On 10 February 2015

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MR SHAMBHU DHITAL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Dr Chhetri, Solicitor
For the Respondent: Mr Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant in this case, Mr Dhital, was born on 22 September 1987 and he is a national of Nepal. He came to this country as a student and appears to have had a number of unfortunate experiences in this country. He claims to have come to this country originally on 17 September 2009 when he went to the London College of Engineering and Management in Arsenal in order to take a level 5 course in travel, tourism and business management. He had leave to remain at that time for six months although the course was for one year. The college was apparently suspended after three months and he had to renew his visa which he did. He then

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moved to the London Empire Academy in Shepherd's Bush to do the same course he had been doing before. Again, this was a one year course. His visa at this stage was granted for three months but the college was downgraded from highly trusted status to B level. He then left that college and went to a highly trusted one which was the London College in Arsenal. The course he took there was apparently an integrated business management course including hospitality management. This course was suspended. It was said before the hearing in the First-tier Tribunal which I will refer to below that he had paid the first college £3,500, the second college £3,000 and the third college £2,200. He has been in this country for some five years now and he estimates that between course fees, accommodation and living expenses he has spent £40,000 in this country and he has nothing to show for it.

2. He applied for a variation of his leave to enter or remain and this application was refused on 9 August 2013 and at the same time removal directions were made under Section 47 of the Immigration, Asylum and Nationality Act 2006. The appellant appealed against this decision and this appeal came before First-tier Tribunal Judge Boyd sitting at Richmond on 17 September 2014 and was argued before the judge on the basis that the appeal should be allowed under Article 8 outside the Immigration Rules.

3. In a determination promulgated on 1 October 2014 Judge Boyd dismissed the appeal. The appellant has now appealed against this decision to the Upper Tribunal and somewhat surprisingly in my judgment was given permission to do so by First-tier Tribunal Judge Hollingworth on 14 November 2014. In setting out his reasons for granting permission to appeal Judge Hollingworth stated as follows:

> "1. In the light of the history of the colleges referred to by the judge at paragraph 7 of the determination, it is arguable that circumstances have arisen to take the appellant's case beyond the unfortunate into the relevant criteria for considering Article 8 in the light of the expenditure incurred by the appellant in relation to the colleges in question. The judge has not conducted an Article 8 exercise in the alternative on the footing that those criteria for considering Article 8 were in fact met".

4. During the course of this hearing on behalf of the respondent Mr Wilding submitted that the judge had in fact conducted an Article 8 exercise outwith the Rules because at paragraph 16 he stated that:

> "I would have to be satisfied that there are compelling, compassionate or exceptional circumstances in relation to the appellant such as would render the decision to refuse to vary leave to remain and to remove him to Nepal disproportionate".

The judge then went on to state that:

> "There is nothing in the appellant's situation which meets any of those criteria. It is unfortunate that he has spent so much time and money in the United

> Kingdom and has been unable to complete his course but being unfortunate is not sufficient in this case to make it compelling, compassionate or exceptional".

It was for this reason that the judge then stated that: "I am not satisfied that there is any evidence that would permit me to consider Article 8 outwith the Immigration Rules".

5. On behalf of the appellant, Dr Chhetri made a number of submissions which can be summarised as follows. First he claimed that the appellant had compassionate and compelling grounds pursuant to which he should have been allowed to remain. The judge should have exercised his discretion "not arbitrarily but on the facts" and it was asserted that he had not done so. The compelling reasons were first that he had come here in 2009 and so had been here for more than five years, second that he had spent £40,000 in this country concerning which he had given oral testimony, third that he had been deceived by his colleges and was a victim, fourth that it was the responsibility of the respondent to monitor these colleges and the respondent should not be able to ignore that responsibility, fifth that his family and he himself had suffered and been put in "big trouble" because they had spent money for which they had had absolutely no return and finally that this country, which has a huge tradition in the sense of being a provider of education including having educational establishments such as Oxford and Cambridge, would be in a position where this appellant would now have to return to Nepal having spent five years here having nothing to show for it. This, argued Dr Chhetri, amounted to compelling and compassionate reasons why the appeal should be allowed.

6. Regrettably for the appellant there is absolutely nothing contained in either the grounds or in the submissions of Dr Chhetri which comes close to establishing that there was any error of law at all in the judge's determination. The judge, as Dr Chhetri accepted, applied the correct test which was that he had to be satisfied that there were compelling, compassionate or exceptional circumstances such as would render the decision disproportionate for Article 8 purposes.

7. The appeal has been founded on the private life rights of the appellant and it is quite clear from established jurisprudence that the right to education as such cannot form a proper basis for asserting private life rights. Although the appellant's position is unfortunate, that does not give rise to any rights such as is claimed in this case but in any event the judge considered properly whether or not there were any factors which might permit him to allow this appeal under Article 8 outside the Rules and has given adequate reasons for concluding (as any judge considering the facts of this appeal would have been bound to conclude) that there is simply no arguable Article 8 claim available to the appellant.

8. In summary this appeal is absolutely hopeless and no judge properly considering the material submitted could conceivably have allowed this appeal. It follows that notwithstanding the forceful and persistent manner in which the appellant's appeal was argued on his behalf by Dr Chhetri the appeal must be dismissed and I so order.

Decision

There being no error of law in the determination of the First-tier Tribunal this appeal is dismissed.

Signed:

Upper Tribunal Judge Craig Date: 6 February 2015