IAC-AH-CJ-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/38647/2013

THE IMMIGRATION ACTS

Heard at Centre City Tower, Birmingham	**Decision & Reasons Promulgated**
On 23rd October 2015	**On 4th November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR SANJAY PAUL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M M Haque (Solicitor)
For the Respondent: Mr D Mills (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge E B Grant, following a hearing at Hatton Cross on 13th October 2014. In the determination, the judge dismissed the appeal of Mr Sanjay Paul. The Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me

The Appellant

2. The Appellant is a male, a citizen of Bangladesh, who was born on 15th January 1981. He appealed against the decision of the Respondent Secretary of State rejecting his application for leave to remain as a Tier 4 (General) Student in a decision dated 3rd September 2013.

The Appellant's Claim

3. The Appellant's claim is that the allegation against him is that he undertook a course in Aston College, while he was not sponsored by Aston College, but he maintains he was not required to be sponsored by Aston College as this was simply a supplementary course that he was doing alongside his main studies at the Finance and Management Business School (FMBS), and Aston College was perfectly aware of this (see paragraph 3 of his witness statement).

4. He was having problems with the FMBS and so Aston College allowed him to undertake a "supplementary course", although he was unable to obtain a CAS from Aston College, and the Appellant referred to a letter dated 29th May 2014 in this regard. The problem with FMBS was that it lost its licence.

5. The Appellant was waiting for a 60 day letter from the Respondent. This never arrived. As he did not have a CAS from FMBS, he enrolled on a supplementary course at Aston College in August 2011.

The Judge's Findings

6. The judge noted the Appellant's case that,

> "He took an admission to Aston College because FMBS College lost their licence and the Appellant was unable to continue with them. He searched for the new college and found Aston College who told him they could not issue him a CAS letter because to do so they needed to see a '60 day letter from the Home Office'" (see paragraph 5 of the determination).

The judge observed the Appellant's case that the Aston College course was a supplementary course to the FMBS course and subsequently he did not breach any conditions attached to his leave. Reference was made by the judge to the case of **Kaur (Patel fairness: Respondent's policy) [2013] UKUT 00344** (see paragraph 7 of the determination).

7. The judge also observed that the Respondent's case was straightforward, namely, that "the Appellant did not comply with the conditions attached to a previous leave and did not obtain permission to study at Aston College from the Respondent" (paragraph 8). This meant that the Appellant failed to meet the requirements of paragraph 322(3) of HC 395.

8. The findings of the judge were that when FMBS College lost its licence the Appellant's leave to remain had more than six months before expiry. He did not receive a letter from the Respondent curtailing his leave to 60 days. Although the Appellant argued that he did not receive that letter,

and he was not able to obtain a CAS letter from another college, the judge rejected the Appellant's argument that,

> "No-one would issue him a CAS letter without a '60 day letter'. There is no evidence to support his claim that a '60 day letter' was required to be issued with a CAS and there is no evidence from any college that he approached, that was a requirement" (paragraph 9).

Second, the judge held that, "there is indeed no evidence that the Appellant met the entry requirements of any subsequent college and qualified for the issuance of a CAS".

9. Accordingly, the Appellant had breached his conditions, which were attached to his leave, and there had been no unfairness in how the Respondent had dealt with the application. The Appellant had in fact benefited by the absence of any curtailment of leave. He was free to continue his studies in the UK so long as he obtained a CAS and made a proper application to vary leave. He did not do so.

10. The judge also found as a matter of fact that the course that he had enrolled on was not for the Appellant a supplementary course. He had finished studying at FMBS College because it had lost its sponsorship licence. It was after that that, "over a month later he commenced studying at Aston College without leave from the Respondent" (paragraph 11).

11. The appeal was dismissed.

Grounds of Application

12. The grounds of application state that the judge failed to consider the special circumstances applying in the Appellant's case. The judge also erred in disregarding cogent evidence from a course provider as to the nature and status of the supplementary course in question. She was referred to the case of **Kaur (Patel fairness: Respondent's policy) [2013] UKUT 00344**, and this was relevant to the Appellant's case.

13. It was common ground that the licence was revoked whilst the Appellant was studying and that no grace period of 60 days was extended to the Appellant. Moreover, nowhere in the determination did the judge consider the Appellant's Article 8 claim in respect of his private life in the UK.

14. On 22nd December 2014, permission to appeal was granted on the basis that it was arguable that the Appellant had in his grounds raised the issue of Article 8 and was entitled to expect a decision from the Appellant on this issue. The judge had failed entirely to consider Article 8 and this amounted to an arguable error of law.

Submissions

15. At the hearing before me on 23rd October 2014, Mr Haque, appearing on behalf of the Appellant, submitted that his FMBS College was suspended, and he did not receive a 60 day letter, so he simply embarked on a supplementary course. The CAS had originally been accepted and 30 points had originally been given. Second, Article 8 had not been considered. This was plainly an error. Mr Haque relied upon his skeleton argument before me.

16. For his part, Mr Mills submitted that it was accepted that the CAS had been withdrawn, on the basis that the FMBS College was not a proper college, but the refusal was on the basis that the Appellant had breached his conditions by studying at a college for which he had no permission to study in the form of a CAS letter. A letter from Aston College states that permission to do a supplementary course had been given to him. However, it could not be supplementary because the main college had closed down. Therefore, the Appellant failed to comply with paragraph 322 of HC 395. He simply could not succeed under the Rules.

17. Second, the licence of the sponsoring college expired as long ago as 2012 and the Appellant had ample time to find another college in the ensuing six months but failed to do so. The failure to send him a 60 day letter did not cause him any prejudice at all. In fact, as the judge had found, he had benefited from a period of study in the UK.

18. Third, the giving of a "60 day letter" was not mandatory under the Home Office's policy. It was done where people had in previous years been studying at colleges, when unbeknown to them the licence of that college had been withdrawn, and they were left high and dry, and it was in order to address the injustice to them, that the 60 day letter was introduced, to enable them time to find another college. In the Appellant's case, there was no such prejudice to him. He had six months to find another college. He had failed to do so.

19. Fourth, as far as Article 8 was concerned, the Appellant simply could not have succeeded. The case of **Patel** makes it clear that that Article is not there to protect the private life of students in the UK. The case of **Nasim [2014]** also makes it clear in the headnote that Article 8 has "very limited utility". These cases had removed the position from what had been established in **CDS (Brazil)**, and it would be wrong now to shift the jurisprudence back to that position, in circumstances of the present case.

20. In reply, Mr Haque submitted that there was ample evidence to show that no college would accept the Appellant without a 60 day letter of grace from the Home Office because they would not know what they were getting themselves into and so the suggestion that the 60 day letter was not required was untenable.

21. Second, it remained the case that Article 8 had not been considered.

Error of Law

22. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law. This error, however, is only on the basis that Article 8 was not addressed by the judge. The Appellant was entitled to a decision on Article 8. However, the Appellant cannot succeed on the basis of "unfairness" that he was not sent a 60 day letter.

23. This is because the judge's findings in this case are otherwise unimpeachable. She has found that the Appellant breached his conditions by embarking on a course of study for which he did not have a CAS. He says that he did not receive a 60 day letter. However, he had "more than six months before expiry" (see paragraph 9). When he did embark on a course of study at Aston College, he did so in a manner which was a month after the FMBS College lost its sponsorship licence, and in these circumstances the Appellant was studying at Aston College without leave from the Respondent, in a manner where it could not be said that this was a "supplementary course". The judge was right in coming to these conclusions.

24. Therefore, the Appellant could not have succeeded, as Mr Mills has pointed out before me today, on the basis of paragraph 322(3) of HC 395. However, the failure to make a decision on Article 8 remained a material error.

Remaking the Decision

25. I have remade the decision on the basis of the findings of the original judge, the evidence before her, and the submissions that I have heard today.

26. I am dismissing this appeal for the following reasons. First, I adopt the reasoning that the judge gave on the failure to comply with the Immigration Rules and the fact that the Appellant acted contrary to paragraph 322(3) of HC 395, and I have summarised the basis for this in the paragraph above, so that there was no basis for saying that the Appellant could succeed simply by virtue of the fact that a 60 day letter had not been sent to him, where he had six months yet to find another college.

27. Second, that leaves the question of Article 8. However, as Mr Mills has made clear, the established case law now is, following the decision of the Supreme Court in **Patel**, that Article 8 is not there to protect the private life rights of students who are in this country on the firm understanding that their leave has been granted to them on a limited basis. The facts of this case provide abundant evidence for why this situation applies precisely here.

28. The case of **Nasim [2014]** had confirmed that in cases such as this, Article 8 would have a "very limited utility". There appeared to have been no particular submissions before the judge below about the nature of the Appellant's Article 8 private life rights and there were no submissions before me. There is nothing in the skeleton argument to this effect.

29. None of this suggests that the Appellant has a particular exceptional case to make in terms of Article 8 private life rights, except to say that he has been in the UK, has expended monies through his parents' investment (see paragraph 11 of his witness statement) "in order for me to pursue a bright future obtaining a world class degree from a UK institution" and that, "it is very catastrophic to see my plans being demolished" (see paragraphs 11 to 12). This does not make for a basis for the Article 8 jurisdiction being extended to cover facts simply of this nature. The appeal is dismissed.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is dismissed.

No anonymity order is made.

Signed Date

Deputy Upper Tribunal Judge Juss 2nd November 2015