Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/44423/2014

THE IMMIGRATION ACTS

Heard at IAC Birmingham	**Decision and Reasons Promulgated**
On 20 July 2015	**On 27 July 2015**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

ALI NAQASH

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr N Smart, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan, born on 18 December 1987. He has been given permission to appeal against the decision of First-tier Tribunal Judge Hussain, dismissing his appeal against the respondent's decision to refuse his application for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant under the points- based system.

2. The appellant's immigration history is not clear from the papers, but appears to be that he entered the United Kingdom in September 2012 with leave to enter as a student. He was subsequently granted leave to remain as a Tier 4 (General) Student Migrant until 30 March 2015, to study at Midlands Business Management College. However following the revocation of the college's sponsor licence, his leave was curtailed on 14 July 2014 to expire on 15 September 2014.

3. On 15 September 2014 the appellant made his most recent application, for leave to remain as a Tier 4 (General) Student Migrant. That application was refused on 22 October 2014 on the grounds that he had failed to meet the maintenance requirements of the immigration rules under paragraph 245ZX(d) and Appendix C. Since he did not meet the requirements of paragraph 14 of Appendix C for having an established presence studying in the United Kingdom he was required to meet the higher level of funds for maintenance, which he was unable to do.

4. The appellant appealed against that decision and requested that the appeal be determined on the papers without an oral hearing. In determining the appeal, First-tier Tribunal Judge Hussain noted that the appellant had produced no evidence other than an unsigned skeleton argument and had provided no details of any courses he had completed or their duration and no evidence that he was presently studying. He found accordingly that the appellant had failed to satisfy the burden of proving that he had an established presence in the United Kingdom and of proving that he was able to meet the maintenance requirements of the immigration rules. He found that there was no evidence to suggest that the respondent had not observed the common law principles of fairness and he found that the appellant's removal would not be in breach of Article 8 of the ECHR, with regard in particular to paragraph 276ADE. He dismissed the appeal on all grounds.

5. Permission to appeal that decision was sought by the appellant in person on the grounds that the decision was contrary to the common law principles of fairness since the respondent had accepted all the facts about his courses and bank statements; that he was studying; and that his removal would breach his Article 8 rights.

6. Permission to appeal was granted on 5 May 2015 on arguable grounds of unfairness, on the basis that it was arguable that the respondent had failed to comply with directions and to provide the judge with the relevant evidence.

7. At the hearing there was no appearance by or on behalf of the appellant. No further evidence had been filed. I heard brief submissions from Mr Smart and indicated that I found no errors of law in the judge's decision. My reasons for so concluding are as follows.

Consideration and findings

8. Permission was granted on the basis that it was not obvious that the respondent had complied with directions given by the Tribunal on 20 January 2015 and that the evidence held by the respondent had arguably not been put

before the judge. However, having had the opportunity to consider the papers in the file it is clear that the respondent did respond to the directions and provided the Tribunal with an appeal bundle which was before the judge when he heard the appeal. It is also clear that there is nothing in the respondent's appeal bundle which comprises evidence that enabled the appellant to make out his case for having an established presence studying in the United Kingdom at the time his application was made.

9. The documents in the respondent's appeal bundle include the CAS produced by the appellant for a course of studies at University Tutorial College commencing on 22 September 2014. The respondent accepted that a valid CAS had been produced and awarded the appellant the relevant points in that respect. However the CAS did not in itself demonstrate that the appellant was actually undertaking those studies and, as the judge properly found, there was no evidence to that effect. Neither was there anything in that bundle, or in the appellant's own evidence for the appeal before the First-tier Tribunal, demonstrating that he had completed a single course of at least six months' duration or that he had completed six months of study and was applying to continue studying on that same course, as was required under paragraph 14 of Appendix C. The judge was accordingly entitled to conclude that the appellant had failed to demonstrate that he had an established presence studying in the United Kingdom, that he was required to meet the higher threshold for maintenance, and that he had failed to meet that threshold. There was no unfairness in the decision of the respondent or the judge and he was entitled to make the decision that he did.

10. Having found, for reasons properly given, that the appellant could not meet the requirements of the immigration rules for the purposes of the points-based system application, the judge went on to give full and proper consideration to Article 8, both within and outside the rules. The decision that he reached was one that was properly open to him on the evidence.

11. Accordingly, I find no errors of law in the judge's findings under the immigration rules or on Article 8 grounds and I uphold his decision.

DECISION

12. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed

Upper Tribunal Judge Kebede Dated: