



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/34221/2014**

THE IMMIGRATION ACTS

**Heard at City Centre Tower, Decision & Reasons
Birmingham Promulgated
On 14th January 2016 On 12th February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR RIZWAN BASEER SHAIKH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No legal representation
For the Respondent: Mr I Richards (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge McDade, promulgated on 9th December 2014, following a hearing at Stoke-on-Trent on 31st October 2014, in which the judge dismissed the appeal of Rizwan Baseer Shaikh, whereupon the latter 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 India, who was born on 28th January 1983. He appealed against the decision of the Secretary of State to refuse

the Appellant further leave to remain in the United Kingdom as a Tier 4 Student, in a decision dated 13th August 2014.

The Appellant's Claim

3. The basis of the Appellant's claim is that he was unable to sit his B2 examinations due to the fact that his passport had been retained by the Home Office and therefore the test centres would not permit him to sit the tests without sight of the original passport. Without the passport, and the results from the B2 examinations, the Appellant would not have been issued with a fresh CAS letter, which he needed.

The Judge's Findings

4. The judge observed how the Appellant entered the UK on 6th October 2012 with a valid IELTS certificate. He had been granted leave until 11th February 2014. On 28th January 2014 he applied for further leave to remain and on 23rd May 2014, the Home Office notified him that his college, Leyton College, was no longer listed on the Tier 4 Sponsor register as its licence had been revoked. The Home Office, however, sent the Appellant a letter stating that he had 60 days to choose another college and to obtain a new CAS.
5. However, the Appellant's IELTS had expired and he was required under the Rules to produce an up-to-date certificate. He then sat and failed the examination. The Appellant's explanation for this is that he was given very short notice of the examination. The judge held that this was not a good reason for failing or a good excuse for failing. The fact was that the Appellant's ability in English should have been more advanced than it was when he originally obtained his IELTS over two years earlier. Since that time, not only had the Appellant been in the United Kingdom for one and a half years but he had been undertaking an academic course of study. There was simply no justification for his poor level of English.
6. The judge went on to observe how the Appellant then attempted to re-sit the examination but the institution was not satisfied with the poor copy of his passport that he had provided (the original one being with the Home Office). The institution asked him to produce "A good clear copy of the main details page of the passport, certified by the Home Office".
7. The Appellant appeared to believe that he was required to produce a colour copy of the passport and he requested this from the Home Office. The Home Office were unable to comply with this request for a coloured copy.
8. Finally, the judge observed that it is notable that when the Appellant sat the exam, which he failed, the Home Office did provide a certified copy of his passport at that time. This was sufficient to allow him to sit the exam.

Grounds of Application

9. The grounds of application state that the judge did not consider Article 8 ECHR even though this had been pleaded in the Grounds of Appeal and this was an error of law.
10. Permission to appeal was granted on 2nd February 2015 on the basis that Article 8 had been pleaded and that, "Although the Appellant's chances of success are very small, it is arguable that it is material".
11. On 20th February 2015, a Rule 24 response was entered to the effect that,

"Although the judge did not deal with Article 8 per se it is clear that on the factual basis of this case there could be no prospect of a successful Article for the Appellant. This is because the Supreme Court in **Patel [2013] UKSC 72** had stated (at paragraph 57) that, 'The opportunity for a promising student to complete his course in this country, however desirable in general terms, is not in itself a right protected under Article 8'."

The Hearing

12. At the hearing before me, the Appellant was unrepresented. I enquired of him why he was unrepresented and whether he wished to proceed. He said that his representative had told him that the representative did not need to go to the hearing and that, "If you want to go yourself you can". On behalf of the Home Office, Mr I Richards, a Senior Home Office Presenting Officer, was in attendance. I asked the Appellant if he wished to say anything in relation to the matter before this Tribunal. The Appellant submitted that,

"I am a victim of the system. I don't want to study here. I want to go home. But I don't want to have a bad record to stop my career back home. It is not my fault that the college I attended closed down. It is not my fault that the Home Office failed to provide me with my passport".
13. For his part, Mr Richards submitted that there was no reason put forward why the decision is wrong in terms of the Immigration Rules. As far as Article 8 is concerned the Rule 24 response makes it clear that there would have been no prospect of success had Article 8 been considered. The case of **Patel [2013] UKSC 72** makes it clear that there is no human right to complete a course that one has been engaged in. In the present case the Appellant was not such a student whose human rights to study can be said to have been interfered with given his track record.
14. In reply the Appellant said that he had now sat the test. He held up a certificate. He said that he had achieved a "distinction" at another centre. To this other centre he had sent a Xerox copy of his passport. However, what he is not allowed to do is to sit an IELTS test because they require the original passport.

Decision on Error of Law

15. I am satisfied that the making of the decision by the judge is not one that points to a material error of law, such that I should set it aside and remake the decision. Under the Procedure Rules, “The Upper Tribunal may (but may not) set aside the decision of the First-tier Tribunal (see Section 12(2) (a)). Although Article 8 is pleaded, there is no evidence that it was expressly raised at the hearing before Judge McDade, even though the Appellant was represented at that time. The judge should have considered Article 8 in any event. However, the failure to consider it is not a material error in the circumstances of this case. It would not have affected the outcome of this case. It cannot for that reason be germane to the eventual decision reached by the judge.
16. The Appellant’s ultimate complaint is that he was not provided with a colour copy of his passport, but as the judge found the Home Office did provide a certified copy of his passport when the Appellant did sit the exam which he failed. The Appellant was not in any way disadvantaged by the actions of the Home Office and the judge makes this clear in saying that the provision of the copy of the passport, “Was sufficient to enable the institution to allow him to sit the exam” when it was first sat. The judge also went on to say that it is the responsibility of the Appellant, “To ensure that the appropriate documentation is provided to enable him to sit the IELTS examination. He did not do so, the reason being that he asked the Home Office for a colour copy but they simply did not have the facilities to provide”.
17. If the Appellant asks for more than he is entitled to, he cannot be surprised if the Home Office cannot comply with an unreasonable request. In the end, the Supreme Court judgment in **Patel** governs. There is no right, and there would have been no right in a case such as the present, for the Appellant to complete his course in this country, “However desirable in general terms” this might be. It is all very well for the Appellant to produce a certificate before me, which the Home Office have not had the opportunity to examine, to say that he has now reached the level of distinction, after sitting another examination, which is not the IELTS examination, as approved by the authorities. It does not mean that his claim has any merit at the time of its consideration by the Respondent Home Office.

Decision

18. There is no material error of law in the original judge’s decision. The determination shall stand.
19. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

10th February 2016

