



IAC-FH-AR-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/42396/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 21 March 2016**

**Decision & Reasons
Promulgated
On 21 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

**MR ASIFUR RAHMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss N Rafique, J A Stifford Law Solicitors

For the Respondent: Ms S Sreeraman, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Turquet (the Immigration Judge) promulgated on 29 July 2015. The

Immigration Judge decided to dismiss the appellant's appeal against the respondent's decision to refuse him leave to remain as a Tier 4 (General) Student Migrant and decide to remove him from the UK.

2. I have carefully considered the grounds on which permission to appeal to the Upper Tribunal was given by Upper Tribunal Judge Freeman on 11 February 2016. Unfortunately, Judge Freeman, as he acknowledged, was not supplied with all the earlier decisions of the Immigration and Asylum Chamber. In particular, Judge Freeman pointed out that there was an earlier decision of the Upper Tribunal in this case which he had not been given. That is a decision of Judge Digney dated 15th March 2015, as it subsequently transpired.
3. I not only have the benefit of having seen Judge Digney's decision but also the earlier decision of First-tier Tribunal Judge Carroll on 18 December 2012, against whose decision the appellant appealed to Judge Digney.
4. The grounds that are now raised on behalf of the appellant argue that:
 - (1) that the Immigration Judge misapplied the evidential flexibility policy;
 - (2) that the Immigration Judge misapplied section 85A of the Nationality, Immigration and Asylum Act 2002 ("2002 Act");
 - (3) that the Immigration Judge failed to properly apply the public law duty to act fairly.
5. It is clear to me that the grounds raised seek to re-litigate matters that were determined by Judge Carroll, which were subsequently dismissed by Digney. The background to the decision of the Immigration Judge can be established from the decision of Judge Digney. The appeal to the Upper Tribunal determined by Judge Digney related solely to the removal directions under Section 47 of the 2002 Act. Judge Digney did not allow an appeal or revisit the substantive merits of the decisions made by the First-tier Tribunal by Judge Carroll in 2012. However, he set-aside the removal decision made by the respondent and remitted it back to her to make a fresh decision. The respondent made a fresh decision to refuse to extend the appellant's leave to remain and on 6th October 2014 issued a fresh notice to the appellant to the effect that the appellant was liable to removal. That was the decision appealed to the Immigration Judge in 2015.
6. Miss Rafique, who appeared for the appellant at the hearing before the Upper Tribunal as well as appearing in the Tribunal below, has raised a number of interesting arguments including the application of the *ratio decidendi* of the Supreme Court in a case called **Mandalia [2015] UKSC 59**. However, having read that decision it does not deal with the situation where an appellant has provided a series of documents but there are missing pages or extracts from those documents. The argument that a request could have been made by the respondent for further information before reaching a decision is therefore incorrect, in my view. Miss Rafique also has sought to raise an issue about the wider public law duty of

fairness but I am satisfied that the decision is not unfair in the public law sense. In any event the Immigration Judge fully considered this in her decision, finding that the respondent had correctly applied the evidential flexibility policy. There does not appear to be any material error of law on her part.

7. Miss Rafique has also sought to amend her grounds to add an additional ground under paragraph 3C of the Immigration Act 1971 on the basis that her client has been prejudiced in some way by being treated an illegal overstayer. This has not previously been the subject of any application for permission to appeal but she makes an oral application before me to amend her grounds to deal with this.
8. As Miss Sreereman, who appears for the respondent, has made clear, these matters were the subject of clear findings by the First-tier Tribunal. In particular, the Immigration Judge felt bound by Judge Carroll's finding that the appellant failed to meet the requirements of the Immigration Rules. That is clearly the extent of the earlier decision. Nevertheless, the arguments that the appellant now seeks to raise were considered but rejected by Judge Digney. Therefore, whilst the arguments raised by Miss Rafique are interesting, they cannot ultimately succeed. The FTT made clear findings, in so far as it needed to, given that many of the matters raised had already been dealt with. I have to consider whether there is a material error of law in the decision of the FTT. I am satisfied that the grounds of appeal do not establish any material error of law.
9. In the light of my findings, the Immigration Judge's decision stands.
10. Judge Freeman in giving permission was clearly somewhat perplexed as to the background of this case and I am grateful to the parties as they have at least expanded on that background. Having considered the full history of this matter, I have decided to dismiss this appeal.

Notice of Decision

There is no material error in the decision of the FTT. The appeal against that decision is dismissed.

No anonymity direction was made by the FTT and I make no anonymity direction.

Signed

Date

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Hanbury