Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/49218/2014
IA/49220/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 29th January 2016	**On 2nd February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

MR MUHAMMAD NUR HUSSAIN
MRS SHARMIN AKTER
(ANONYMITY DIRECTION NOT MADE) Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Vanas, legal representative, Visa Inn
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against a decision of FTTJ Cockrill, promulgated on 3 August 2015.

Background

2. The first appellant was granted limited leave to enter the United Kingdom as a Tier 4 migrant from 11 April 2009 until 31 July 2010. His leave was extended as a student and a Tier 1 Post-study Worker until 14 August 2014. The second appellant was granted leave to enter the United Kingdom as a Tier 1 dependent partner until 14 August 2014. On 14 August 2014 the appellants sought further leave to remain under Tier 4 of the Rules. Their applications were refused on 26 November 2014 as the first appellant had not provided a valid Confirmation of Acceptance for Studies (CAS) and the second appellant was refused further leave in line.

3. In the grounds of appeal, it was said that the first appellant had tried his level best to submit a CAS without success and reference was made to the appellants' rights under Article 8 ECHR on account of their private lives. Specifically, the appellants were requesting 60 days leave to find a new Tier 4 sponsor.

The hearing before the FTTJ

4. Neither appellant attended the hearing, which took place on 10 July 2015. The FTTJ had sight of a GP's letter dated 7 July 2015, which stated that the first appellant had low back pain and had been advised to have complete bed rest for two weeks. The representative who attended on the appellants' behalves was instructed only to seek an adjournment. The FTTJ refused the adjournment request and the appellants' representative then withdrew. The FTTJ proceeded to dismiss both appeals under the Immigration Rules owing to the absence of a CAS.

Error of law

5. The grounds of appeal argue that the FTTJ failed to consider Article 8; that there were compelling circumstances; that the first appellant was a genuine student; that the appellants had integrated with British society; that there would be very significant obstacles to their integration in Bangladesh because the first appellant had not finished his degree, he had spent a significant amount of time and money on his studies and the appellants had two children who had recently been born in the United Kingdom.

6. FTTJ Grimmett granted permission, finding there to be an arguable error of law for the FTTJ not to consider the appellants' Article 8 claim which was raised in their notices of appeal.

7. The Secretary of State did not serve a Rule 24 response.

The hearing

8. Mr Vanas advised me that he had been instructed after the First-tier Tribunal hearing. He complained that neither of the previous representatives had served witness statements or any evidence from the appellants on the Tribunal.

9. Mr Vanas further complained about the previous Tier 4 sponsor, BPP, at length and referred to evidence, which he recently obtained in relation to how unfairly he considered the first appellant was treated. He had sought this evidence on 27 December 2015, over five months after the hearing before the FTTJ. Ultimately, he conceded that none of this evidence was before the FTTJ and he accepted that he could not say the FTTJ had erred in refusing the appeal under the Rules on the basis that there was no CAS. Mr Vanas also accepted that the grounds did not include a claim that the FTTJ had fallen into procedural error in refusing to adjourn the appeals and he made no application to amend the grounds to include this matter.

10. Mr Tufan emphasised that permission to appeal was granted on the basis of the failure of the FTTJ to consider Article 8, not in relation to the issue of the CAS or whether the appellants could satisfy the requirements of the Rules. The notice of appeal referred to Article 8 but no particulars were provided. While a judge should ordinarily address Article 8, it was clear from the evidence before the FTTJ in this case that human rights were not engaged. Otherwise, Mr Tufan relied on paragraph 57 of Patel & Others v SSHD [2013] UKSC 72 and urged me to note that the appellants had a clear remedy, in that they could return to Bangladesh voluntarily and obtain a new CAS. With regard to the appellant's children, he asked me to note that this issue was not brought to the attention of the FTTJ.

11. In response, Mr Vanas argued that the appellants did not have the opportunity to have their case heard in the First-tier Tribunal. He accepted that they had not mentioned the matter of their twins in the notice of appeal.

Decision on Error of Law

12. The only issue before me was whether the FTTJ erred in not making any Article 8 findings. In appealing the refusal of further leave to remain, the appellants' previous representatives, namely Legend Solicitors, drafted grounds of appeal on their behalf. Those grounds amounted to 18 paragraphs, which ended with the statement; "*Hence the appellant is requesting for 60 days to find a new Tier 4 sponsor*." While the grounds included reference to Article 8 ECHR, only the following was said, "*Appellant has built up social ties in the UK; he has also build up private life in the UK during his period of stay*." No further particulars of this private life were provided.

13. In Patel, the following was said; "*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.*" In these circumstances, I find that had the FTTJ considered the bare assertion made in the grounds of appeal, the Article 8 case would have been dismissed on the basis that Article 8 was not engaged. Accordingly, the FTTJ's failure

to address the Article 8 grounds before him, while an error, is not a material error of law.

14. Visa Inn immigration specialists sent a bundle of material by facsimile to the Upper Tribunal on 18 January 2016. The appellants have produced photocopied birth certificates, which show that the second appellant gave birth to twins on 25 January 2014. Notwithstanding that these children were born around 18 months prior to the hearing, this issue was never put to the FTTJ.

15. I also note that the appellants made no application for their twins to have leave to remain in the United Kingdom; there is no mention of the twins in the Tier 4 applications and no mention of them in the grounds of appeal. The FTTJ cannot be criticised for not considering an issue, which was never before him. However even had the FTTJ been aware of the existence of these children, given that neither appellant has leave to remain in the United Kingdom, that the children are neither British nor settled here and that they would have been very young at the date of the hearing, even had the FTTJ considered the appellants' family life with their children, he was bound to conclude that there would be no interference with that family life caused by the removal of the family of a whole to Bangladesh. It is of course open to the appellants to make a human rights application should they wish to do so in which the best interests of their children can be considered in detail.

Conclusion

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I uphold the decision of the FTTJ.

No anonymity direction was made by the FTTJ and I am aware of no reasons for making such a direction now.

Signed Date: 30 January 2016

Deputy Upper Tribunal Judge Kamara