IAC-FH-NL-V2

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/49867/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17 February 2016	**On 4 April 2016**
Prepared 17 February 2016	

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MR MANU MATHEW
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Sreevalsalan, instructed by Legend Solicitors
For the Respondent: Ms S Sreeraman, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of India, date of birth 22 September 1988, appealed against the Respondent's decision, dated 28 November 201, to refuse leave to remain as a Tier 4 General (Student Migrant) under the points-based system and to make removal directions under Section 47 of

the Immigration, Asylum and Nationality Act 2006. His appeal came before First-tier Tribunal Judge Bowler who, on 8 July 2015, dismissed the appeal with reference to the Immigration Rules and under Article 8 of the ECHR but did not address the removal directions.

2. Permission to appeal that decision was given by Deputy Upper Tribunal Judge Mailer on 12 November 2015.

3. The Respondent made a Rule 24 response on 17 December 2015.

4. The grounds of appeal against the judge's decision [D] essentially were directed at the question of whether the judge should have investigated further and/or sought to establish whether the Immigration Officer's record of interview correctly recorded the Appellant as having said he worked for 30 hours per week; whereas subsequently or at the time the Appellant argued that he had said only twenty hours a week. A general issue of fairness was raised which, in my view, was misplaced in relation to the format of the interview conducted by the Immigration Officer. It is said that because the Immigration Officer should have investigated the issue of the number of hours worked and perhaps other matters relating to the course modules completed. The failure to do so by the Immigration Officer was said to be unfair and such unfairness tainted the judge's decision.

5. The interview was carried out, on 17 November 2014, of the Appellant ran to some 36 questions. Of those, Mr Sreevalsalan particularly relied upon one part of an answer to question 29 in terms of the number of hours worked a week. He submitted that there was no other element of unreliability claimed by the Respondent. Although I note before the judge an issue was latterly raised over the number of modules the Appellant had undertaken but that was not an issue argued before me.

6. Mr Sreevalsalan also relied on the decision of the Upper Tribunal in a judicial review being a decision of the President in Mushtaq v ECO

Islamabad IJR [2015] UKUT 00224 (IAC). From that case it is clear that the President of the Upper Tribunal was identifying expectations in relation to fairness which might arise in relation to ECO's interviews bearing in mind what became the challenges the ECO made to the reliability of that Appellant and his application.

7. As a matter of general approach in interviews there was an expectation of fairness but there was nothing on the face of the interview or points being taken about contradictions in the interview to show that the interview was being used as a tool to challenge the credibility or reliability of the Appellant; as had been the case in the decision made by the ECO in Mushtaq. Rather, the judge identified that a request contained in grounds of appeal to the First-tier Tribunal for sight of the transcript had in fact been provided. The Appellant had the opportunity to consider that matter with his representative and on the face of it there was no unfairness in the judge proceeding with the hearing.

8. The judge went on to note that the Appellant gave evidence about the interview in respect of the hours of work was disputed and the judge returned to that issue in [D24] of the findings. In the circumstances, the judge heard submissions from Mr Sreevalsalan as well as from the Respondent.

9. I do not accept, on the face of the documents provided, the judge was under an obligation to resolve the issue of the accuracy of the interview record because, quite simply, it is impossible to see how that could have been effectively conducted at the time but, more importantly, there was no need to do so because the judge was alerted to the disputed matter and nevertheless went on to make the findings that he did.

10. I find that there is no procedural unfairness which tainted the judge's decision nor any arguable issue of unfairness in relation to the conduct of the Immigration Officer's interview. I can find no proper basis to show the

judge made any arguable error of law in his own right on the evidence received.

11. It was said the judge was wrong in effect to have concluded that it was open to the Appellant to adduce evidence at the hearing of the appeal concerning the number of hours he worked each week. It seemed to me that when the point was taken in the Reasons for Refusal Letter or the Notice of Immigration Decision, it was always open to the Appellant, by evidence, to challenge the issue of the number of hours that the Respondent referred to and to show by way of payslips or otherwise even to the extent of an employment contract, that he was only contracted to work twenty hours a week and no more. I have not seen the employment contract which has still not been produced. I cannot tell whether or not the hours of work are limited to twenty hours a week and absent a letter from the employer or employers confirming that the Appellant had only worked twenty hours a week and not more it was hard to see what other conclusion the judge could otherwise have come to.

12. In my view there was no arguable error of law by the judge making reference to the employment contract because even that he did not treat as effectively determinative of the hours of work that the Appellant could have undertaken. Alerted to the issue the Appellant, between November 2014 and the hearing in June 2015, had ample opportunity to prepare and present evidence touching upon it and also had the opportunity with such evidence to invite the Respondent to reconsider that basis of refusal.

13. In any event, the judge also refused the matter by reference to issues of whether or not the appellant was a genuine student and the judge gave reasons why he rejected the Appellant's claim. Thus, there was a further and separate basis for refusal.

14. The judge noted that no submissions were made in relation to Article 8 ECHR although it had been raised in the grounds of appeal.

15. I have to say the judge did not consider whether or not there was any basis to look at Article 8 outside of the Immigration Rules but the judge's decision on that matter is not challenged. For these reasons therefore I find the judge made no error of law. The Original Tribunal decision stands.

16. The appeal by the Appellant is dismissed.

NOTICE OF DECISION

The appeal is dismissed.

No anonymity direction was sought or necessary.

The appeal has failed no fee award can be made.

Signed Date 20 March 2016

Deputy Upper Tribunal Judge Davey

P.S. I regret the promulgation has been delayed du to the case file being mis-filed.