Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/07663/2017

THE IMMIGRATION ACTS

Heard at Birmingham City Centre Tower	**Decision & Reasons Promulgated**
On 01 August 2019	**On 09 August 2019**

Before

UPPER TRIBUNAL JUDGE PITT

Between

MR MUHAMMAD ALI
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Khurram of Khurram & Co Solicitors
For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge C Chapman issued on 16 April 2018 which refused the appellant's Article 8 ECHR claim brought against a refusal of leave to extend stay as a student.

2. The appellant is a national of Pakistan, born on 29 July 1991. Mr Ali came to the UK as a Tier 4 (General) Student on 6 October 2011. He was granted further leave as a student until 21 June 2014. On 16 June 2014 he applied for further leave as a student. That application was refused on 20

August 2014 as, by the time the respondent came to make a decision, the Certificate of Acceptance of Studies (CAS) had been withdrawn.

3. The appellant appealed the refusal of leave and on 20 November 2014 his appeal was allowed by First-tier Tribunal Judge Matthews. This was on the basis that the withdrawal of the CAS was in no way the fault of the appellant and that, where this was so, he was entitled to a 60-day letter enabling him to seek a new educational sponsor. The decision of First-tier Tribunal Judge Matthews was upheld in a decision dated 21 May 2015 by Deputy Upper Tribunal Judge Juss.

4. The respondent implemented the decision of the Tribunal on 15 September 2015, granting the appellant a 60-day letter, with leave valid until 14 November 2015.

5. On 5 November 2015 the appellant made an application for further leave to remain outside the Immigration Rules. He did not apply for further leave as a student as he had not been able to obtain a new educational sponsor or a new CAS. He maintained that this was an unfairness and breach of his Article 8 ECHR rights where the timing of the respondent's 60-day letter meant that the universities or colleges he could apply to in order to continue his studies, by 15 September 2015, had already begun their term, had closed admissions and had informed him that he could only enrol in January or February 2016. His application for leave to remain outside the Rules was on the basis of a short extension to enable him to do this.

6. On 20 January 2016 the respondent refused the application and certified the refusal as clearly unfounded under Section 94 of the Nationality, Immigration and Asylum Act 2002, affording the appellant only an out of country appeal right.

7. The appellant judicially reviewed that decision. Upper Tribunal Judge Eyre QC granted permission on 29 December 2016. He stated as follows:

> "(6) In those circumstances the Applicant has a realistic prospect of successfully contending that the decision of 20th January 2016 was unreasonable by reason of a failure to address a relevant consideration, namely the contention actually being made by the Applicant that an extension was warranted in the particular circumstances"

The judicial reviews was withdrawn by consent order dated 3 March 2017, the respondent agreed to reconsider the decision within three months.

8. The respondent provided a new decision on 26 June 2017 and it is that decision which led to these proceedings. The decision refused to grant leave outside the Immigration Rules and found that the appellant did not qualify for leave under Article 8 ECHR.

9. The appellant challenged the decision of 26 June 2017 and the appeal came before First-tier Tribunal Judge Chapman on 13 April 2018.

10. In paragraph 46 of the decision, Judge Chapman found as follows:

> "46. I note that reliance is placed on the decision of Upper Tribunal Judge Eyre QC when finding that the judicial review proceedings had a realistic prospect of success. The issues before him, and those in the judicial proceedings were different from those before me in this human rights appeal. I do not agree that Judge Eyre was intending in any way to be suggesting the likely outcome of this appeal."

11. The appellant submits that this was an incorrect approach to the permission decision of Upper Tribunal Judge Eyre QC and that the issues in the judicial review and the statutory appeal were "almost identical". That is not correct. Judge Eyre QC was asked to consider whether the respondent had acted unlawfully in failing to take into account the appellant's reasons for being unable to obtain a new CAS as part of the consideration of whether to grant leave outside the Immigration Rules. He found it arguable that the respondent had not taken into account this potentially material aspect of the appellant's application for leave. His decision was not determinative, only finding the matter to be arguable. His decision did not concern the substantive merits of the appellant's fairness claims which were in issue before Judge Chapman, only whether they had been considered at all in the decision of January 2016. The First-tier Tribunal did not err in its approach to the decision of Judge Eyre QC.

12. The First-tier Tribunal made the following findings on the appellant's case that the timing of the 60 day letter dated 15 September 2015 was unfair:

> "52. Yet, on the documents provided to me, which show the Appellant's contacts with universities and colleges (many of which are undated and do not assist), the earliest date I find of contact is 19 October 2015. This is over halfway into the 60 day period. Looking at all the evidence in the round, although the Appellant seeks to attribute blame to the 'uncompromising' attitude of the Respondent for him not being able to continue his studies, I find that he did not demonstrate the desire and urgency which his situated warranted. This casts some doubt on his motives for seeking to remain in the United Kingdom."

13. The appellant maintains that this reasoning was in error as the judge should have found that the appellant was so disadvantaged by the respondent's timing of the September 2015 60-day letter that he should have been granted a short period of further leave in order to find an educational sponsor. However, the materials before me show that Judge Chapman was correct that the appellant did not provide any evidence of trying to find an educational sponsor prior to 19 October and that this was over halfway into the 60-day period allocated to the appellant.

14. Further, as Mr Bates pointed out at the hearing, a document at page 12 of the appellant's bundle showed that Westminster Kingsway College had closed their course only at the end of September so, had the appellant made full use of the 60 days from 15 September onwards, he could have found courses still open to him.

15. Further, the respondent clearly followed his own policy regarding the obligation to afford 60 days of leave to find a new educational institution when an applicant is without a CAS for no fault of their own. Nothing required the respondent to issue the 60 day letter at a time that was preferential to the appellant. It will be obvious that requiring a 60 day letter to be timed in order to suit courses of interest to an individual student would impose an almost unworkable burden on the respondent.

16. Further, the inability of the appellant to obtain a CAS during the September to November 2015 period did not mean that he was without options for further studies. As the respondent's refusal letter indicated, having taken account of the appellant's difficulties during the September to November 2015 period, the appellant could return to Pakistan to continue his studies there or could return to Pakistan in order to apply for entry clearance to come back to the UK.

17. The grounds refer to a delay by the respondent which should have led to a finding of unfairness and the appeal being allowed under Article 8 ECHR. I was not taken to any period of delay by the respondent here. The decisions followed his applications in reasonable time and his various appeal hearings and the judicial review proceedings progressed within normal time limits. I did not find that this argument had any merit.

18. It will be clear from the chronology set out above that the appellant has lived by far the majority of his life in Pakistan where he has his immediate family. He has only ever been in the United Kingdom with precarious leave. He seeks leave to continue with his studies when he can do so in Pakistan or apply to return to the UK to study in future. An Article 8 case based on private life in these circumstances could not have succeeded and the First-tier Tribunal Judge here took a lawful approach in paragraph 53 onwards in finding that there was no disproportionate breach of the appellant's Article 8 human rights either under the Immigration Rules or outside the Immigration Rules.

19. For all of these reasons, it is my view that the First-tier Tribunal did not err in the decision refusing the appeal.

Notice of Decision

The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed:  Date: 1 August 2019

Upper Tribunal Judge Pitt