



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

Appeal Number: IA/01533/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 27<sup>th</sup> June 2013**

**Determination**

**Promulgated**

**On 9<sup>th</sup> July 2013**

.....

**Before**

**UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**KASHIF HAYAT**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mrs L Turnbull of Counsel instructed by Ali Sinclair Solicitors

For the Respondent: Mr P Nath, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is the Appellant's appeal against the decision of Judge Heynes made on the papers at Manchester on 1<sup>st</sup> May 2013.

## **Background**

2. The Appellant is a citizen of Pakistan who arrived in the UK on 20<sup>th</sup> February 2011 with leave to enter until 26<sup>th</sup> August 2012. On 21<sup>st</sup> December 2012 a decision was made to refuse to vary his leave to remain in the UK and to remove him by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.
3. The Appellant had made a combined application for leave to remain on 25<sup>th</sup> August 2012 as a Tier 4 (General) Student Migrant under the points-based system. He was refused because he could not show that he was intending to study a course which represented academic progression from his previous studies, and because his Sponsor did not meet the requirements of the Rules as set out at paragraph 13 of Appendix C.
4. The Judge, in a very brief determination, stated that the Grounds of Appeal conceded that the course which the Appellant wished to study was at a lower level than his previous course of study and made no reference to the financial Sponsor. He dismissed the appeal under the Rules and stated that Article 8 was pleaded but had no relevance since it was not the function of Article 8 to enable applicants to circumvent the requirements of the Rules.
5. The Appellant sought permission to appeal on the grounds that the judge had failed to provide any proper basis for his decision. He had made no reference to any of the evidence submitted by either party, had made no clear findings of fact and had failed to direct himself about the proper approach to consideration of Article 8.
6. Permission to appeal was granted by First-tier Tribunal Judge Frances for the reasons stated in the grounds on 21<sup>st</sup> May 2013.
7. On 6<sup>th</sup> June 2013 the Respondent served a reply stating that she continued to oppose the Appellant's appeal but considered that there was potential merit in the grounds of challenge. The Respondent could only agree that the Article 8 consideration in the determination was inadequate but this would only be material if it could be identified why the circumstances both engage Article 8(1) and entail a disproportionate interference with protected rights.

## **The Hearing**

8. Mrs Turnbull relied on her grounds, essentially submitting that the determination was not an adequate consideration of the facts of this case. She said that it was the Appellant's contention that the new course did represent a progression in his studies because it was a new subject area and he would be acquiring new skills. He had a legitimate expectation that the college would not have advised him to undertake the course and to take his fees if it did not represent academic progression. She relied on the case of CDS (PBS available Article 8) Brazil [2010] UKUT 00305 which

held that Article 8 could be relevant in student cases and submitted that the Judge's treatment of the issue was plainly wrong.

9. Mr Nath accepted that the determination was overly brief but submitted that since the Appellant could not succeed under the Rules or in relation to Article 8 any error was immaterial.

### **Findings and Conclusions**

10. The Judge ought to have engaged with the Grounds of Appeal and his comment that the function of Article 8 is not to enable an applicant to circumvent the requirements of the Rules is not an accurate statement of the law. To that extent he erred.
11. However the fact is that this Appellant cannot succeed in his application. With respect to progression in study, he sought leave to undertake an extended diploma in management at NVQ level 5 but he was previously issued leave to study on a CAT/ACCA course at NQF level 6. In his Grounds of Appeal he states that the institution advised him to submit an application for further leave after assessing his ability and academic progression and the courses are from two different disciplines. That does not answer the point. Acting on advice does not mean that he is in a position to meet the requirements of the Rules. He was intending to study at a lower level than his previous course, and the fact that the second course is in another discipline is irrelevant.
12. With respect to the maintenance requirements, the Appellant says that he had the required funds in his bank accounts continuously for the prescribed period and provided bank statements to confirm that he met the maintenance criteria of the Rules. According to the information before the Respondent the Appellant was relying on funding provided by a Mr Mohammed Afzal, a family friend who confirmed that he had sufficient funds in his bank account to maintain and accommodate the Appellant. However under paragraph 13 of Appendix C of the Immigration Rules, an applicant has to show that funds are held by either the applicant or his parents or legal guardian or an official financial Sponsor. Mr Afzal therefore does not meet the requirements of the Rules with regard to the status of financial Sponsors.
13. With respect to Article 8, Mrs Turnbull confirmed that no particular facts were relied on save that the Appellant was studying in the UK.
14. He has been here for a brief period of time, only two years, and will have developed some private life as a consequence of having studied here. However he has spent almost all of his life in Pakistan and, when he came to the UK, it was for a temporary purpose. Whilst in some cases Article 8 can be engaged in student cases, as held by the Tribunal in CDS (Brazil), this is not such a case. The Appellant is not a person who has been admitted to follow a course which has not yet ended and has adduced no evidence to show that he has built up a private life deserving of respect.

**Decision**

15. The Judge's decision stands. The Appellant's appeal is dismissed.

Signed

Date

Upper Tribunal Judge Taylor