



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

Appeal Number: IA/02932/2013

THE IMMIGRATION ACTS

Heard at Field House

On 20th September 2013

**Determination
Promulgated**

On 2nd October 2013

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MAHMUDUL IMTIAZ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Bangladesh born on 4th February 1984.
2. He arrived in the United Kingdom on 31st July 2006 as a student with a visa valid until 31st October 2009. Further leave to remain as a student was granted until 29th October 2012.

3. The appellant applied for further leave to remain as a student but that was refused on the basis that he was seeking to undertake studies at a degree level or above beyond the maximum period of five years.
4. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Youngerwood on 1st May 2013.
5. It was common ground that the appellant could not meet the requirement of the Immigration Rules, but nevertheless argument was advanced on the basis of Article 8 of the ECHR.
6. In summary the appellant unfortunately was diagnosed with a schizoaffective disorder in November 2007. He was admitted to hospital under the Mental Health Act on 20th January 2007 until 8th January 2008. Since then he has been receiving treatment and assistance for his condition.
7. He had come to the United Kingdom in order to study for a BA in Applied Accounting. In the normal course of events that course of study was expected to have been for 3 years but because of his mental health problems he was unable to complete that course on time and his expected finish date was revised to 30th August 2013.
8. The application made on his behalf under Article 8 of the ECHR was not to reside in the United Kingdom on any permanent basis but rather to be granted leave to remain until such time as he had completed his BA and could return to Bangladesh.
9. The Judge concluded that Article 8 was not engaged and dismissed the appeal.
10. Grounds of appeal were submitted against that decision. Initially leave to appeal was refused but granted on 6th August 2013.
11. Thus the matter comes before me in respect of that appeal. The matter was listed for oral hearing but shortly before the hearing there was received a bundle of documents from those acting on behalf of the appellant, indicating that they were content for a paper hearing. Unfortunately that letter requesting a paper hearing was dated 16th September 2013, and arrived too late for the oral hearing to be cancelled. Mr Wilding represents the respondent.
12. In essence the grounds of appeal contend that the Judge approached the issue of Article 8 on a very narrow basis and failed to consider the breadth of the principle as set out in **CDS (Brazil) [2010] (IAC)**. It is contended that inadequate consideration was given to the mental health of the appellant, to his diligence as a student, and to the desirability that his

proposed studies would be shortly accomplished, providing that appropriate leave was granted.

13. It was noted that the Judge was sympathetic to the situation of the appellant and indeed expressed his hope that the respondent would exercise discretion outside of the Rules. It was contended, however, that this was a case where the Article 8 appeal was deserving of success.
14. Mr Wilding, on behalf of the respondent, invited me to find that the Judge had properly considered the circumstances of the appellant and particularly his ill-health. Indeed, the respondent had been sympathetic to that difficulty and it was for that reason that leave was extended upon the second application. My attention was invited to paragraph 17 of the determination where the Judge says as follows:-

“Indeed, it seems to me that the respondent dealt extremely fairly with the appellant when they granted him his second leave, and notwithstanding his medical evidence, with the result that he failed to achieve anything in his first course of studies. The relevant Immigration Rule is based on a computation of time and the appellant was not preventing from providing any evidence relevant to that computation. On any basis, he has been granted more than the maximum period allowed under the current Immigration Rules.”

15. Mr Wilding invites me to find that the Judge had properly considered all the relevant factors in assessing the Article 8 claim. The nature of the appellant’s illness and condition is well set out in the determination and it is entirely apparent that the Judge is not unsympathetic to the issue but finds that on the proper application of Article 8 that it does not apply.
16. In any event he invites my attention to the way in which the matter was put before the Immigration Judge, namely that the appellant be permitted to remain until August 2013 at a time when his degree would be completed. That time has indeed arrived and passed, and so any error that there may be in the decision of the Judge is not material to its outcome.
17. Mr Wilding expressed some concern that notwithstanding, the position as advanced before the Judge and indeed supported by evidence from the college, there now seems to be a suggestion in the more recent submissions under cover of the letter of 16th September 2013 and the grounds particularly thereof, that the appellant’s studies will now not conclude until January 2014. There is a letter from the LCA Business School of London dated 13th September 2013 indicating that the appellant is registered on a course that starts on 15th May 2009 and is expected to be completed on 10th January 2014. No explanation has been offered as to why the completion date has been moved from that as previously set out.

18. Mr Wilding invited me therefore to find that the appellant had been treated fairly both by the respondent and also that his human rights had been properly considered by the Judge.
19. The grounds of appeal make reference to the wider aspect of Article 8, particularly in the case of **Green (Article 8 - new Rules) [2013] UKUT 00254 (IAC)**, and of **Izuazu (Article 8 - new Rules) [2013] UKUT 0045 (IAC)** and **Ogundimu (Article 8 - new Rules) Nigeria [2013] UKUT 0060 (IAC)**.
20. All of those cases serve to indicate that the recent changes in the Immigration Rules relating to Article 8 do not alter the test set out in **Razgar**. In determining whether an immigration decision is necessary to maintain the interest of immigration control in a democratic society, it is important in assessing that immigration decision, to ask the question whether a requirement to remove is disproportionate to the legitimate aim.
21. The legitimate aim in this case being of course that the appellant undertake study for which leave was granted and hopefully to obtain a qualification as a result. There is little point in granting leave to enter as a student if the student is not generally permitted in the exercise of that leave to reach a satisfactory conclusion to the studies.
22. Recognising of course that in this particular case the appellant does not meet the strict Rules because his course of study contravenes the five year principle. It is, however, understandable why that is so in his case. There is, however, no suggestion that he is otherwise than a diligent and honest student seeking to improve his studies. Indeed it has been argued it is to be held to his credit that, notwithstanding his mental health difficulties, he has made every effort to continue with his studies.
23. The grounds conclude that proportionality would dictate that the appellant be allowed to remain in the United Kingdom, certainly until the completion of his study.
24. The Judge was well aware in considering Article 8 that the appellant needed but to complete two modules of his course, effectively to sit and pass it. The Judge was directed to **CDS (Brazil)** and to the importance of the principle that a student should not be removed in the middle of a course.
25. However, as the Judge noted, it is not automatically disproportionate to remove someone who cannot meet the Immigration Rules in the middle of a course. The Judge found that there can be no "legitimate expectation" that the appellant will be granted extensions of leave, when due to medical factors or other reason he is unable to complete the course in the time originally allocated to him, and which was originally considered sufficient.

26. This is the point touched upon by Mr Wilding in his submissions that the appellant has already been given one extension of leave in order to complete his studies.
27. The permission to appeal raises the issue that the Judge was more focused upon immigration control rather than acknowledging the particular circumstances of the appellant and his mental health.
28. The merits of the matter are finely balanced, but it is to be noted in fairness to the Judge that, at paragraph 17 of the determination, the mental health of the appellant was very much to the forefront of consideration. It was the finding of the Judge, however, that in granting the second period of leave the respondent had acted fairly in all the circumstances. It cannot be said that the Judge was unaware of the mental conditions of the appellant as it is set out in considerable detail in paragraphs 8 and 9 of the determination.
29. The difficulty, as Mr Wilding has indicated, in this sort of case is to determine when the length of permission should come to an end. The Judge clearly has recognised the importance of completing the study to the appellant, but also the importance of maintaining proper immigration control.
30. Looking at the matter overall I do not find that the Judge has erred in the approach to the matter that has been taken. Even were it the case that the Judge had made an error, such is not material in the circumstances as presented to the Judge because the period of leave that was originally requested was until August 2013, a time which has now passed.
31. As I indicated previously, no explanation has been advanced as to why that period is now said to be January 2014. No doubt if that matter can be clarified by those acting on behalf of the appellant and communicated to the respondent, it would be my hope, as was indeed expressed by the First-tier Tribunal Judge, that discretion could be exercised certainly for that limited period.
32. In the circumstances therefore the appeal is dismissed. The decision of the First-tier Tribunal Judge shall therefore stand, namely that the appeal in respect of the immigration decision is dismissed, and that in respect of Article 8 of the ECHR is also dismissed.

Signed

Date

Upper Tribunal Judge King TD