



**The Upper Tribunal
(Immigration and Asylum Chamber)
IA/00495/2014**

Appeal number:

THE IMMIGRATION ACTS

**Heard at Manchester
On November 21, 2014**

**Determination Promulgated
On November 24, 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR DANISH RASHID
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mrs Pettersen (Home Office Presenting Officer)

For the Respondent: No appearance

DETERMINATION AND REASONS

1. Whereas the respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellant, born September 19, 1988 is a citizen of Pakistan. He entered the United Kingdom as a student on January 21, 2010 with leave to remain until July 31, 2011. He was granted

further leave to remain as a Tier 4 (General) student until December 31, 2012 and on March 7, 2013 he was granted further leave to remain until October 30, 2013. On October 30, 2013 he applied for further leave to remain as a Tier 4 (General) student but this was refused on December 4, 2013 because he failed to demonstrate he held the correct amount of funds in the bank statements he had submitted. A decision to remove him under section 47 of the Immigration, Asylum and nationality Act 2006 was also taken.

3. The appellant appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on December 19, 2013. On May 23, 2014 Judge of the First Tier Tribunal Smith (hereinafter referred to as the "FtTJ") heard his appeal. He allowed the appeal under both the Immigration Rules and article 8 ECHR in a determination promulgated on June 6, 2014.
4. The respondent lodged grounds of appeal on June 13, 2014 and on July 22, 2014 Judge of the First-tier Tribunal Page granted permission to appeal finding it arguable the FtTJ had erred by admitting a new bank statement as further evidence and allowing it under article 8 ECHR.
5. The appellant did not file a Rule 24 response and was notified of the hearing date on September 23, 2014. He had not attended by 2.20pm when I called the case on and for the record he had not attended by 5pm that day.

SUBMISSIONS

6. Mrs Pettersen adopted the grounds of appeal and submitted:
 - a. The FtTJ erred in his approach. The appellant had submitted his application on October 25, 2013 and in line with paragraph 1A(h) of Appendix C of the Immigration Rules the appellant has to provide a bank statement where the end of the 28 day period will be taken as the date of the closing balance on the most recent specified document and must be no earlier than 31 days before the date of the application.
 - b. The appellant had to demonstrate he had in his account funds for 28 consecutive days prior to the date of the application, which would mean September 27, 2013. This was a Tier 4 application so Section 85A of the 2002 Act applied to documents submitted later. The FtTJ erred by admitting a later bank statement because this was not a case covered by paragraph 245AA of the Immigration

Rules because the respondent had the specified document before him. The FtTJ erred by admitting the document and erred by allowing the application under the Immigration Rules.

- c. He further erred by allowing the appeal under article 8. The decision of Nasim and others (Article 8) [2014] UKUT 00025 (IAC) makes clear that article 8 ECHR should not be used to enable a student to remain to complete his studies if there are no other factors to consider. The FtTJ therefore erred by allowing the appeal.

MY FINDINGS ON ERROR IN LAW

7. The appellant did not attend the hearing and it may well be, although it was not confirmed, that he has already left the country as he originally claimed he only wanted to extend his stay until September 2014 to complete his paper.
8. I am satisfied that both grounds of appeal have merit.
9. In respect of the FtTJ's decision to admit a subsequent bank statement this was contrary to Section 85A of the 2002 that limits the Tribunal's discretion to admit further documents. This was not a case where the respondent or the Tribunal should have applied any evidential flexibility. This was not a missing statement because the statement provided covered the requisite period. It simply did not satisfy the Rules because there as a three day shortfall. The FtTJ erred in admitting this document and I therefore set aside that aspect of the decision.
10. With regard to the allowing of the appeal under article 8 I am satisfied the appellant's only private life was his studies. He would not satisfy paragraph 276ADE and following the decision in Nasim I am satisfied there was no reason to consider this appeal outside of the Rules. The Tribunal made clear at paragraph [21] of Nasim extending a student's leave under article 8 for purposes of study or work "lies at the outer reaches of cases requiring an affirmative answer to the second of the five "Razgar" questions and that, even if such an affirmative answer needs to be given, the issue of proportionality is to be resolved decisively in favour of the respondent, by reference to her functions as the guardian of the system of immigration controls, entrusted to her by Parliament."
11. The FtTJ had nothing before him that should have led to the leave being extended and he should have dismissed the appeal on private life grounds under the Rules and there were no

exceptional or compelling circumstances that would make removal unjustifiably harsh.

12. In the circumstances I find the FtJ erred in both elements of his assessment.
13. The appellant did not meet the Rules and I dismiss his appeal under the Immigration Rules and I further set aside the decision under article 8 ECHR and find the appellant's private life appeal is covered by paragraph 276ADE, which the appellant cannot meet.

DECISION

14. There was a material error of law in so far as both the Immigration Rules and article 8 ECHR are concerned. I set aside both decisions and I dismiss the appeal under the Immigration Rules.
15. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Dated: **November 24, 2014**

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I do not alter the fee award decision.

Signed :

Deputy Upper Tribunal Judge Alis Dated: **November 24, 2014**