



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/20254/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 8th December 2014

Determination Promulgated
On 10th December 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR RANA AURANGZEB

Respondents

Representation:

For the Appellant: Mr G Harrison (Senior Home Office Presenting Officer)
For the Respondent: Miss L Barton (instructed by FABZ solicitors)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal by the Secretary of State, with permission, against a determination of the First-tier Tribunal (Judge Cruthers) who in a determination promulgated on 26th August 2014 allowed the Appellant's appeal against the Secretary of State's decision to refuse him leave to remain in the UK as a student.

2. For the sake of continuity and clarity I will, in this determination, continue to refer to Mr Aurangzeb as the Appellant and to the Secretary of State as the Respondent.
3. The Appellant in this case came to the United Kingdom as a student in January 2011. By June 2012 he had completed a National Certificate in Manufacturing Engineering and then gained a place at Quinton College in Birmingham to study a Level 5 Extended Diploma in Business and Administrative Management. He was granted further leave to remain as a student to follow that course until March 2014. He paid the fees and commenced study. However, in April 2013 The Home Office informed the Appellant that it had revoked the college's licence and consequently varied his leave such that it would expire in June 2013. By that time the Appellant had been studying at Quinton College from October 2012 until March 2013 and was unable to obtain a refund of the fees he had paid.
4. Within the time allowed the Appellant managed to obtain a place at Bradford Regional College to study a Level 5 Diploma in Management and Leadership. He paid the full fee of £3,500 to the college in order to start immediately. The Appellant then made an application for further leave to remain to study that course which was to run until December 2014.
5. Initially the Secretary of State refused the application on the basis that the CAS relied upon had been withdrawn. The Appellant's appeal against the refusal was allowed on the basis that the Secretary of State had checked the wrong CAS (Quinton College instead of BRC). Judge Ransley allowed the Appellant's appeal against that decision to the limited extent that she remitted it to the Secretary of State for her to reconsider. The Respondent then issued another refusal on the basis that the Appellant had insufficient funds.
6. The appeal before the First-tier Tribunal was argued on the basis that the Secretary of State should have treated the applicant as having an established presence in this country, which required him to show a lower level of funds than otherwise.
7. Judge Cruthers found against the Appellant on that basis. The Appellant would have had to show that he had been studying for six months at Quintin College when in fact he had been studying only five months and two weeks. However, the Judge went on to consider the Appellant's claim under Article 8. He noted that when he heard the appeal, on 26th August 2014, the Appellant's course had only four months to run, until December 2014. He considered that the difficulties encountered by the Appellant were no fault of his. He had been part-way through his studies when the licence was revoked by the Secretary of State. He lost the fees that he had paid to that college. Furthermore, the judge noted that the Secretary of State's initial refusal was made on a wholly erroneous basis because the caseworker had checked the wrong CAS. Since he

was first offered a place at the new College he had been regularly attending classes and submitting assignments and the Judge also found that, having completed his initial course, he is not one of those student appellants who has achieved nothing constructive in the UK. He concluded that the refusal which had the effect of requiring him to return to his country prior to completing his course was disproportionate and he allowed the appeal.

8. The Secretary of State sought permission to appeal which was granted on the basis that the judge had failed to follow the guidance of Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 00640 (IAC) and explain why he had strayed beyond the Rules and considered Article 8 under the ECHR. Also he had failed to consider paragraph 276ADE at all.
9. The grounds I find to be wholly without merit. This case was clearly one that cried out to be allowed on the basis of CDS (PBS "available" Article 8) Brazil [2010] UKUT 305 (IAC). The Appellant was entirely innocent of the matters which had led to him being in the position he found himself. He has done everything asked of him. Even if the Judge had, as the Secretary of State suggests, considered the application of paragraph 276 ADE of the Rules, which the Appellant could not meet and then gone on to consider Article 8, the end result would have been the same in that the Judge would have allowed the appeal for the very reason that he did. Therefore even if it is an error of law not to consider paragraph 276ADE first, it would have made no difference to the outcome for the reasons given by the Judge.
10. It is somewhat surprising that the Secretary of State has chosen to seek permission to appeal in this case. The appeal being allowed on Article 8 grounds, it is entirely a matter for the Secretary of State how long a period of leave she grants to the Appellant. He only wished to complete his course of studies which are due to be completed in December 2014. Having dismissed the appeal to the Upper Tribunal for the reasons that I have given above, it is now a matter for the Secretary of State to consider the duration of leave to be granted.
11. The appeal to the Upper Tribunal is dismissed.

Signed

Dated 9th December 2014

Upper Tribunal Judge Martin