Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/25473/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 13 February 2014	**On 23 May 2014**
	…………………………………

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

EDWARD PEDROCHE TANGONAN
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Khan
For the Respondent: Mr Melvin

DETERMINATION AND REASONS

1. The Appellant is a citizen of the Philippines born in 1974. He appealed against a decision of the Respondent made on 11 July 2013 to refuse his application for discretionary leave outside the Immigration Rules; on the basis of his private life pursuant to paragraph 276ADE of the Rules and under Article 8 ECHR.

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2. The history is that the Appellant first arrived in the UK in March 2007 with leave to enter as a student until May 2009. In May 2009 he sought further leave but it was not until February 2012 that the Respondent informed him that his Sponsor's licence had been revoked and he had to find alternative sponsorship.

3. In March 2012 he applied to vary his leave. In May 2012 he received a refusal letter stating that his Tier 4 application (made in May 2009) had been refused.

4. He appealed against that refusal and a hearing took place before Judge Bennett on 17 August 2012. By his determination promulgated on 5 September 2012 the judge allowed the appeal as not being in accordance with the law. Also on Article 8 ECHR grounds.

5. He found that the Appellant had suffered unfairness due to the delay by the Respondent but that such could be rectified by the grant of a period of leave of sufficient length of time to enable him to work and accumulate the funds necessary to pay the first year fees of £9,000 and the required two months' maintenance (£1,200) and thus to qualify for a grant of leave to remain as a Tier 4 (General) Migrant.

6. In his directions he ordered that the Appellant be granted a period of leave outside the Immigration Rules with an initial grant of four months and that no later than 56 days after the promulgation of the determination the Appellant must send documentary evidence vouching the estimated or actual fees payable for the course, his proposals as to the length of time it would take him to accumulate the required sums and all documentary evidence on which he sought to rely.

7. There was no appeal by the Respondent against Judge Bennett's decision or directions. He was granted six months discretionary leave on 19 December 2012 to remain in the UK.

8. On 4 June 2013 he applied for further discretionary leave. The application was refused. In the refusal letter the Respondent noted that the Appellant had been granted six months discretionary leave to remain to enable him to accumulate the funds needed to satisfy NVQ 4 Health and Social Care. He was then advised to submit a Tier 4 application for leave to remain as a student once he had accumulated these funds. However, in the time frame given he did not accumulate the funds necessary to apply for the course and so did not submit a Tier 4 application.

9. The Respondent further considered that the Appellant did not meet the requirements of paragraph 276ADE of the Immigration Rules and in particular under 276ADE(vi), in that while he was aged 18 years or above and had lived continuously in the UK for less than twenty years (since 2007), he had ties with the country to which he would have to go if required to leave the UK. There was no breach of his Article 8 ECHR rights because there were no exceptional circumstances which would warrant a grant of leave to remain outside the Rules.

10. He appealed stating that the six months leave granted by the Respondent was not sufficient to enable him to accumulate funds as most employers would not employ him for such a short length of time.

11. The appeal came before Judge of the First-tier Tribunal Sweet at Hatton Cross on 4 December 2013. His findings are brief. At paragraph [20] he noted:

> *'The Appellant explained why it was difficult to find employment when he had only a six month visa and it is clear from the letters from two prospective employers … that they were not prepared to employ him for such a short length of time.'*

12. The judge concluded: (at [21])

> *'… The Appellant has not realistically been given the opportunity to satisfy the Respondent that he can provide the necessary funds for his proposed studies. I therefore direct that the Respondent should grant him a twelve month extension to his existing right to remain in the UK to enable him to obtain alternative employment and to provide satisfactory evidence to the Respondent authorities of his ability to raise and save the necessary funds … as to the proposed course fees and maintenance. To this limited extent I allow the appeal.'*

13. The Respondent sought permission to appeal which was granted on 10 January 2014. The grounds, repeated at the error of law hearing, were that the judge made no findings in relation to Article 8 and that any previous injustice in failing to grant the Appellant 60 days to find a new college had by now been rectified. It was inappropriate to grant someone leave to work to meet the financial requirements within the Rules. Following **<u>Patel</u> [2013] UKSC 72** Article 8 is not engaged merely because someone wants to study in the UK. The judge had directed further leave on no lawful basis.

14. Mr Khan's position, in summary, was that the Respondent had failed to observe the terms of the directions given by Judge Bennett in September 2012 which included that the Appellant be granted leave to remain within fourteen days of the Tribunal's decision. It took three months to grant leave. The Respondent also ignored correspondence sent by the Appellant about his inability to get employment because the period of leave granted was too short. Judge Sweet was entitled to conclude that the Respondent had not obeyed the directions set out by Judge Bennett and that as a result the decision to refuse to vary leave made in July 2013 was not in accordance with the law. The Respondent, in Mr Khan's submission, should make a fresh decision applying Judge Bennett's directions.

15. I consider that the decision of the First tier Tribunal shows a material error of law.

16. Firstly, it shows an unjustified assumption that the Appellant should have been given a longer period of leave than he was in fact given. The original direction was for a period of four months. He was given six months. There was no unfairness. It does not matter that it took three months from the Tribunal's decision rather than

fourteen days to grant the leave. The result was he received significantly longer leave than was directed.

17. The judge should have considered whether the Appellant had any basis for stay on human rights grounds. In having regard to irrelevant matters and not having regard to relevant matters the judge materially erred.

18. The determination is set aside to be remade.

19. The evidence before me is that the Appellant is 40 years old. He has been in the UK for six years and eleven months. He has been in a relationship with a partner, also a citizen of the Philippines, for three years. She has leave to study. He has friends and involvement with a church. He has been law-abiding. The delay in the Respondent's decision has resulted in his establishing himself and building a life here.

20. I see no reason to doubt any of that evidence.

21. However the Appellant cannot succeed on human rights grounds under Article 8 within the Rules. As the Respondent noted, the Appellant who is over 18 years of age and has resided in the UK for less than twenty years, lived in the Philippines until the age of 32 before his first entry to the UK. As such he has spent the vast majority of his life in the Philippines, including the entirety of his formative years. He clearly has cultural ties to that country. He cannot meet the requirements of paragraph 276ADE(vi) of the Rules.

22. Nor can he meet the family life provisions under Appendix FM. His partner is not a British citizen, present and settled in the UK or in the UK with refugee leave or as a person with humanitarian protection. She is a citizen of the Philippines with leave on the temporary basis of study.

23. I do not see there to be good grounds for granting leave to remain outside the Rules such that it is necessary to go on to consider whether there are compelling circumstances not sufficiently recognised under the Rules.

24. The Appellant has been here a considerable length of time (approaching seven years) but has spent the vast bulk of his life in his home country. His partner has been here a shorter time. I accept that the effect of delay by the Respondent has been to deepen their relationship. However the Appellant cannot satisfy the Rules. It was for him to utilise the period of leave granted by the Respondent to accrue the costs to enable further study. He was unable to do so. In all the circumstances I fail to see how these circumstances could properly be described as compelling or the outcome unjustifiably harsh. There is thus no proper basis to go on to consider Article 8 ECHR on the facts of this case.

25. Even if I were to apply Article 8 ECHR outside the Rules on the basis of the matters set out above I fail to see how the decision of the Respondent could be regarded as disproportionate. They both came here on a temporary basis. The approach to studies and Article 8 noted in **Patel [2013] UKSC 72** indicates that the application of

Article 8 where education is concerned is severely more limited than has previously been thought. They can continue to develop any family life they have in their home country.

26. In the circumstances, for the reasons set out the appeal must be dismissed.

Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law such that the decision is set aside.

I remake the decision in the appeal by dismissing it.

Signed Date

Upper Tribunal Judge Conway