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Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/30452/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 12 November 2014	**On 18 November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MR TAHA BIN SOHAIL ZAKI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: none
For the Respondent: Mr P Armstrong, Specialist Appeals Team

DETERMINATION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Shepherd sitting at Taylor House on 10 July 2014) dismissing his appeal on the papers against the decision of the Secretary of State made on 2 July 2013 to refuse his application to remain in the United Kingdom as a Tier 4 Student Migrant, and to make directions for his removal under s.47 of the 2006 Act. The First-tier tribunal did not make an anonymity order, and I do not consider that such an order is required for these proceedings in the Upper Tribunal.

2. The ground of refusal was that no valid CAS number had been submitted with his application, and so he did not qualify for the award of points under Appendix A.

3. The grounds of appeal to the First-tier tribunal were unspecific and formulaic. His then representatives contended that the decision was not in accordance with the law, and their client's rights under Article 8 had been violated.

4. The appellant initially asked for an oral hearing, but on 9 July 2013 he submitted a thin bundle of documents (which included a witness statement) in support of his appeal and asked that his appeal be determined on the papers without the need for him to attend in person.

5. In her subsequent determination, Judge Shepherd considered the appellant's evidence and the documents before her. She concluded that the refusal decision was in accordance with the rules and that there had been no breach of evidential flexibility principles, applying **SSHD v Rodriguez [2014] EWCA Civ 2**.

6. The appellant applied for permission to appeal. He acknowledged that the judge had given a detailed decision, but she had not appreciated that the college had been removed from the Tier 4 list and so the CAS could not be issued. So his non-compliance with the rules arose from circumstances beyond his control.

7. Judge Cox granted permission on 3 October 2014. The grounds failed to show an arguable case for saying that the FTT judge had erred in law in finding that he did not meet the rules. But as the appellant was unrepresented, he had looked more widely for an obvious error. There was an obvious arguable error in that the judge had not dealt with the issue of common law unfairness or the appeal on Article 8 private life grounds.

8. At the hearing before me, I was satisfied that the appellant had been properly served with the Notice Of Hearing at his last known address given in the application for permission to appeal, and that there was no procedural unfairness in hearing his appeal in his absence. Mr Armstrong relied on the Rule 24 response dated 16 October 2014, and on **Nasim and others (Article 8) Pakistan [2014] UKUT 25** (**Nasim No 2)**.

Discussion

9. Contrary to what is said in the grant of permission, the judge did not forget to deal with the common law unfairness issue. As well as addressing the question of evidential flexibility at paragraph [39], she directly addressed at paragraph [40] the appellant's case, citing **Patel** and **Thakur**, that he should have been granted 60 days leave to obtain a new CAS letter from a new college as a consequence of his original college being delisted while the application was pending. She gave adequate reasons for finding that the appellant was not entitled to relief on common law unfairness grounds, and the assertion in the application for permission is misconceived. It is not the case that the judge failed to appreciate the appellant's case that his college had been delisted. The judge recognised that this was his case, but found that the appellant had not proved that the college had been delisted, or when it had been delisted, and that therefore he had not shown that his failure to produce a valid CAS

was due to his college being delisted between the date of application and the date of decision.

10. It is true that the judge did not address in her findings an alternative claim under Article 8 ECHR. The appellant relied on **CDS (Brazil)**, as the judge noted at paragraph [31].

11. I am not however persuaded that the judge's failure to address an Article 8 claim based on **CDS (Brazil)** considerations was a material error in the light of (a) the new rules on private life claims and (b) the more recent jurisprudence on private life claims by students who fail to bring themselves within the rules.

12. The evidence relied upon did not disclose a viable private life claim under Rule 276ADE. As to a claim outside the rules, Lord Carnwath's observation in **Patel and Others** at paragraph [57] is highly pertinent. He said that Article 8 "is concerned with private or family life, not education as such. The opportunity for a promising student to complete his course in this country, however desirable in general terms, is not in itself a right protected under Article 8".

13. In **Razgar** [2004] UKHL 27 Lord Bingham said at [17]:

> In considering whether a challenge to the Secretary of State's decision to remove a person must clearly fail, the reviewing court must, as it seems to me, consider how an appeal would be likely to fare before an adjudicator, as the tribunal responsible for deciding the appeal if there were an appeal. This means that the reviewing court must ask itself essentially the questions which would have to be answered by an adjudicator. In a case where removal is resisted in reliance on article 8, these questions are likely to be:
>
> (1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
>
> (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?
>
> (3) If so, is such interference in accordance with the law?
>
> (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
>
> (5) If so, is such interference proportionate to the legitimate public end sought to be achieved?

14. Questions 1 and 2 of the **Razgar** test fell to be answered in favour of the appellant, as he had entered the UK as a student on 23 December 2009. It cannot be disputed that questions 3 and 4 of the **Razgar** test fell to be answered in favour of the respondent. On the question of proportionality, the only non-standard feature in this case (see **Nagre**) was the argument, rejected by the judge, that the appellant had been the victim of circumstances beyond his control. Otherwise there were no compassionate or compelling circumstances which disclosed arguably good grounds for allowing a student appeal on private life grounds outside the rules.

15. So, in the light of the judge's primary findings of fact, there was only one possible answer to an Article 8 claim outside the rules, which is that the proposed interference was proportionate.

Decision

16. The decision of the First-tier Tribunal dismissing the appeal did not contain an error of law, and the decision stands.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Signed Date **18 November 2014**

Deputy Upper Tribunal Judge Monson