



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

Appeal Number: IA/39262/2013

THE IMMIGRATION ACTS

Heard at Field House

On 16th July 2014

Determination

Promulgated

On 28th July 2014

Before

UPPER TRIBUNAL JUDGE POOLE

Between

**MD KHAIRUL ALAM
(ANONYMITY DIRECTION NOT GIVEN)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Samuel, Counsel

For the Respondent: Mr P Deller, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a male citizen of Bangladesh born 15 April 1980. The appellant's immigration history is not in dispute. He entered the United Kingdom as an intending Student in January 2010. He subsequently applied for leave to remain as a Tier 4 (General) Student Migrant. That

application was refused. He appealed. That appeal was dismissed under the Rules but allowed in respect of Article 8 ECHR. As a result the respondent granted the appellant discretionary leave to enable him to complete his studies until 20 August 2013. Prior to that date he applied for further leave but that was refused on 25 September 2013 because the respondent was not satisfied the appellant satisfied the applicable Immigration Rules. The appellant appealed that decision and his appeal came before Judge of the First-Tier Tribunal Keane sitting at Taylor House in March 2014. An oral hearing was held. The appellant attended and each party was represented. In a decision dated 8 April 2014 the judge dismissed the appeal on immigration and Art 8 grounds.

2. The appellant then sought leave to appeal. In summary the grounds allege error in the judge failing to consider the High Court judgment in **Zhang** and a change in Home Office policy enabling applicants to switch into the status of a Points Based System Dependent. Error is also alleged by failing to take proper account of **Chikwamba** and further that the judge failed to consider paragraph 319c of the Immigration Rules.
3. The appellant's application came before another judge of the First-Tier Tribunal who granted leave to appeal. In giving reasons that judge summarised the application by making specific reference to **R (Zhang) v SSHD (Full Reference given)**. Paragraph 3 of the reasons refers to an announced change in policy as a result of **Zhang**.
4. Hence the matter now comes before me in the Upper Tribunal.
5. In his submission to me Mr Samuel summarised the basis of his argument as being that the judge had not dealt properly with the content of paragraph 319c of the Rules. At the time of service of the original decision the respondent also served a Section 120 Notice and in response (by way of the original grounds of appeal) the appellant had given notice of circumstances that should have given rise to consideration of paragraph 319c. That paragraph was also mentioned in the skeleton argument placed before Judge Keane. In the circumstances the judge was obliged to consider it and Mr Samuel submitted it was an error of law to fail to give that aspect consideration.
6. At this stage it must be noted that with due respect to the judge granting leave reference has been given to the wrong case of **Zhang**. The correct case is **R (On the application of Shuai Zhang) v Secretary of State for the Home Department [2013] EWHC 891**. It is a result of this case that as from 1 October 2014 paragraph 319c was added. It has to be said that the original grounds seeking leave were unhelpful in this respect.
7. Mr Deller initially sought to support the First-Tier decision by way of a submission. However a discussion then took place focusing on the fairly straightforward argument put forward by Mr Samuel which focused on

the omission from the determination of any mention of the correctly cited case of **Zhang** and the effect of paragraph 319c of the Rules.

8. During the course of this discussion it was emphasised that by reason of the immigration position of the appellants wife and her ability in August of this year to apply for further leave to remain it was possible for the appellant to seek leave as her dependent.
9. At this stage Mr Deller very helpfully conceded that the limited aspect of a failure to deal with something mentioned in the grounds of appeal and the skeleton argument there was an error of law material to the decision contained within Judge Keane's determination.
10. I indicated my agreement and for the reasons expressed by Mr Deller I concluded that there was a material error of law and fell for me to set aside Judge Keane's decision.
11. Following a discussion with the two representatives it was clear that the correct step now was to remit the case back to the First-Tier Tribunal although it is likely that by the time the case comes to be reheard evens will have moved forward and the situation may well be purely academic. I consider that this case falls within the provisions of the practice directions issued by the Senior President so far as remittal to the First-Tier is concerned.
12. I would direct that there be no listing of this appeal before the First-Tier Tribunal until after 30 October 2014.

Signed

Date 22/7/14

Upper Tribunal Judge Poole