Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/02359/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17 February 2015	**On 17 March 2015**
Prepared on 18 February 2015	

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MR RANA MAHOMMED MASOOD
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant did not appear and was not represented
For the Respondent: Mr E. Tufan, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Bangladesh born on 19 October 1981. He appeals against the decision of Judge of the First-tier Tribunal Powell sitting at Newport on 14 August 2014 who dismissed the Appellant's

appeal on the papers against the decision of the Respondent dated 11 December 2013 to remove the Appellant.

2. The Appellant arrived in the United Kingdom on 8 October 2010 as a Tier 4 (General) Student Migrant. He made a number of unsuccessful applications to extend his leave to remain as a student under the points-based scheme. He did not have a right of appeal as those applications were submitted out of time. The Appellant complained that his failure to meet the requirements of the points-based scheme arose because his solicitors let him down and did not send the relevant documents to the Respondent in time. The Appellant's leave expired on 31 December 2011 and he has had no leave since then.

3. The Respondent refused applications of the Appellant on 30 December 2011 and 5 April 2012. On 6 August 2012 the Appellant made a further application which was refused by the Respondent on 7 December 2012. The Appellant sought to judicially review that decision but since his application of 6 August 2012 was not a human rights claim and since he did not have leave at the time of making his application the Respondent was entitled to refuse that application without a right of appeal. The judicial review proceedings were ultimately unsuccessful. Permission was refused on the papers by Deputy High Court Judge, Mr Alexander Nissen QC and it appears that the judicial review proceedings finally ended on 6 October 2013.

4. The Appellant filed an application for further leave to remain in the United Kingdom on 23 November 2013. That was returned to him because he had not paid the relevant fee. The Respondent took steps to administratively remove the Appellant which led to a raid on the Appellant's home on 11 December 2013 when he was served with notices IS151A and IS151B. IS151A stated that the Appellant was a person who was considered to have failed to observe a condition of leave to enter or remain because his leave had expired before the Sponsor's licence was revoked on 14 September 2012. The Appellant's application on form FLR(O) on 23 January 2013 was refused on 4 December 2013 and the Appellant was therefore an overstayer. Form IS151B acknowledged that the Appellant had made a human rights claim and that a decision had been taken to remove him from the United Kingdom. The Appellant was advised in that form that if he appealed he did not have to leave the United Kingdom while the appeal was in progress.

The Proceedings at First Instance

5. Judge Powell found that the Appellant had a right of appeal against the decision in the form IS151B (the decision to remove the Appellant administratively) and his appeal was in time because the IS151B was

dated 11 December 2013 (there is a typographical error at paragraph 24 of the determination which refers to the date of the IS151B as being 11 December 2014). The difficulty for the Appellant was that he had only submitted a short witness statement dated 5 August 2014 but not other evidence to show that he met the requirements of either Appendix FM or paragraph 276ADE of HC 395.

6. The short statement gave a history of the Appellant's previous unsuccessful applications including his application for judicial review and his application on 13 December 2013 for discretionary leave on the basis of exceptional circumstances. As soon as he was granted discretionary leave to remain he said he would resume his studies and achieve graduation and postgraduate degrees. He had built up a very strong private and family life in the United Kingdom which he described as "I am habituated with the culture and norms of the UK where I have adopted with the environment to all extent. I always spend my time with some of the British friends and thereby I have become very integral part of their family". The Judge dismissed the Appellant's appeal.

The Onward Appeal

7. The Appellant appealed arguing that the Judge had failed to consider the flexibility policy following the case of **Rodriguez**. The Respondent should have contacted the Appellant for further information as to why the Appellant had failed to produce evidence to show that he had genuinely exceptional circumstances. The Judge had failed to find out why the Appellant had not been granted leave to remain as a student. The points-based system had become more complex and applications were being refused on mere technicalities. His own application for a Tier 4 visa was refused merely for technical reasons. The Judge had overlooked the Appellant's private life. The Appellant had been in the United Kingdom for almost five years, undergone education, gained experience within the period that he had been in the United Kingdom and invested money, time and effort in studying. It was not proportionate to ask him to simply pack up and leave.

8. The application for permission to appeal came on the papers before Judge of the First-tier Tribunal Hollingworth on 9 January 2015. In granting permission to appeal he wrote:

> "This case was determined on the papers. At paragraph 3 of the determination the Judge states that it was the Respondent's case that the Appellant is an overstayer and liable for administrative removal. The basis of the decision, the Judge continued, is unsupported by any documentation apart from a hand-endorsed IS151A dated 11 December 2013. This referred to an application made by the

> Appellant on 23 November 2013 for leave to remain which was said to have been refused on 4 December 2013. The Appellant was entitled to assume that the Respondent would have presented the history of the case so that the Judge could proceed upon a sufficient foundation in relation to the fact-finding exercise. The Judge was prevented from doing this."

9. The Respondent replied to the grant of permission on 22 January 2015 stating:

> "The Respondent opposes the Appellant's appeal. In summary the Respondent will submit inter alia that the Judge of the First-tier Tribunal directed himself appropriately. The IS151A was not an appealable decision. It would appear from the Respondent's database that the Appellant was served with IS151B. However the IS151B was certified as clearly unfounded and as stated on the document there was therefore no in country right of appeal. Therefore it is not clear on what basis the Judge was able to consider the appeal. The Respondent considers that there was not an in country right of appeal and that therefore the determination is materially flawed for want of jurisdiction."

The Hearing before me

10. When the hearing was called on before me there was no appearance by the Appellant. He was not represented but I was satisfied that notice of the hearing was sent to him at his address at 27B Station Parade, Cockfosters Road, Barnet on form IA113 on 27 January 2015. There being no reasonable cause for the Appellant's absence I decided to proceed in his absence. I heard brief submissions from the Presenting Officer before reserving my decision. The Presenting Officer indicated that if the decision had been certified then under Section 94(2) of the Nationality, Immigration and Asylum Act 2002 there was no in country right of appeal.

Findings

11. The difficulty with the Respondent's argument on certification is that there was no evidence on the file before Judge Powell that the Appellant's application had been certified. Form IS151B which was the notice of immigration decision to remove the Appellant referred to an attached letter giving the Respondent's reasons for the decision. There was no such letter on the file and in those circumstances it is not surprising that Judge Powell decided to treat the IS151B as meaning what it said and giving a right of appeal to the Appellant. I do not consider that there was an error of law on Judge Powell's part in treating the appeal as valid.

12. I do not find it easy to understand the permission to appeal decision. Judge Hollingworth appears to have been under the impression when granting permission that Judge Powell was unaware of the reason for the refusal on 4 December 2013. The letter dated 4 December 2013 refusing the Appellant's application was on file and Judge Powell specifically referred to the point at paragraph 21 of the determination where he wrote:

> "The Appellant filed an application for further leave to remain in the United Kingdom on 23 November 2013. It was returned to him because the Appellant had not paid the relevant fee. The decision to return the application which is not an immigration decision was dated 4 December 2013."

13. Had Judge Hollingworth directed himself to that paragraph in the determination he might not in fact have granted permission to appeal at all. Judge Hollingworth was concerned that the Respondent might not have presented the history of the case in such a way that the trial Judge had an insufficient foundation for his fact-finding exercise. The only omission I can see in the determination is the absence of a letter said to accompany the IS151B. However that does not prejudice the Appellant because in his absence as I have indicated Judge Powell was entitled to consider that the Appellant had a valid right of appeal.

14. The core issue in the case was whether the Appellant had demonstrated that he had a private and/or family life in this country which would be disproportionately interfered with if he were to be returned to Bangladesh under the terms of the IS151B. Judge Powell came to the view that there was so little information from the Appellant that the Appellant could not make out such a case. Having considered the papers in this case I consider that Judge Powell was entirely right in his conclusion. The evidence such as it is in the Appellant's statement is sparse to say the least. That the Appellant complains about advice he has received over the years from immigration advisers concerning his applications to study bears little weight. Similarly that the Appellant has made friends whilst he is here carries little weight. Such private life as the Appellant has built up he has built up whilst his status has been unlawful. Pursuant to Section 117B of the 2002 Act little weight is to be given to his private life in the balancing exercise to determine the proportionality or otherwise of the interference with his private life. That interference is pursuant to the legitimate aim of immigration control since the Appellant has overstayed his visa.

15. I see no evidence in the file that the Appellant has formed any kind of family life in this country. He merely asserts that he has become an integral part of his friend's family but without more that cannot found a claim to have established a family life in this country. There is no supporting evidence from any of the Appellant's friends to confirm the relationship.

16. The Appellant has sought to prolong his stay in this country by lodging a series of completely hopeless applications which have wasted the time and resources of the Respondent in dealing with them. His application for a judicial review was clearly without any merit at all as Judge Nissen pointed out. The decision to remove the Appellant is entirely proportionate to the legitimate aim being pursued because of the little weight to be attached to the Appellant's private life and the considerable weight to be attached on the other side of the scales to the public interest in removing the Appellant. There are no compelling or compassionate circumstances in this case such that the Appellant should be granted leave to remain outside the Immigration Rules. I therefore dismiss the appeal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal.

Appeal dismissed.

I make no anonymity direction as there is no public policy reason for so doing.

Signed this 16th day of March 2015

.....
Deputy Upper Tribunal Judge Woodcraft

TO THE RESPONDENT
FEE AWARD

As I have dismissed the Appellant's appeal there can be no fee award.

Signed this 16th day of March 2015

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Deputy Upper Tribunal Judge Woodcraft