



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

Appeal Number: IA/19126/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 23rd February 2015**

**Determination Promulgated
On 9th April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**MR MD ATHAUR RAHMAN CHOWDHURY
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Claimant

Representation:

For the Appellant: Mr Shamsuzzoha, legal representative of SEB Solicitors
For the Respondent: Ms Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Mr MD Athaur Rahman Chowdhury date of birth 3 March 1985, is a citizen of Bangladesh. I have considered whether it is appropriate to make an anonymity direction in the present proceedings. Taking all the circumstances into account I do not consider it necessary.
2. This is an appeal by the appellant against the determination of First-tier Tribunal Judge Colvin promulgated on 25 November 2014, whereby the judge dismissed the

appellant's appeal against the decision of the respondent dated 10 April 2014. The decision by the respondent was to refuse the appellant further leave to remain in the UK as a Tier 4 (General) Student Migrant under paragraph 245 ZX (d) and the Points Based System of the Immigration Rules and thereupon to remove the appellant from the UK under section 47 of the 2006 Act. .

3. By decision made on the 15th January 2015 leave to appeal to the Upper Tribunal was granted. Thus the matter appeared before me to determine in the first instance whether or not there was a material error of law in the original decision.
4. In granting leave to appeal it was noted that Judge Colvin had failed to consider the appellant's Article 8 rights. It was being asserted on behalf of the appellant that the appellant had a legitimate expectation that he would be allowed to complete his degree in which he had invested time, effort, energy and money. It was also asserted that the judge had failed to take into account the common law duty of fairness.
5. The grounds of appeal do not challenge the findings of fact made under the Immigration Rules. It appears to be accepted that the appellant had a means under the immigration rules by which he could remain in the United Kingdom but that he failed to submit the required documentation and did not have the required funds in his account for the required period of time or had not proved that he had the required funds for the required time. In essence the appellant wishes to remain in the United Kingdom in order to complete his university degree but cannot meet the requirements of the rules in order to obtain an extension of stay and therefore seeks to assert that it would be a breach of Article 8 private life rights or it would be contrary to the, law principles of fairness not to allow him to complete his degree.
6. I would draw attention to the cases CDS Brazil [2010] UKUT 305. At paragraphs :-
 17. It is apparent from these principles that Article 8 does not provide a general discretion in the IJ to dispense with requirements of the Immigration Rules merely because the way that they impact in an individual case may appear to be unduly harsh. The present context is not respect for family life that can in certain circumstances require admission to or extension of stay within the United Kingdom of those who do not comply with the general Immigration Rules. It is difficult to imagine how the private life of someone with no prior nexus to the United Kingdom would require admission outside the rules for the purpose of study. There is no human right to come to the United Kingdom for education or other purposes of truly voluntary migration.
 18. However, the appellant has been admitted to the UK for the purpose of higher education and has made progress enabling extension of stay in that capacity since her admission in 2007. We acknowledge that that gives no right or expectation of extension of stay irrespective of the provisions of the Immigration Rules at the time of the relevant decision on extension.
 19. Nevertheless people who have been admitted on a course of study at a recognised UK institution for higher education, are likely to build up a relevant connection with the course, the institution, an educational sequence for the ultimate professional qualification sought, as well as social ties during the period of study. Cumulatively this may amount to private life that deserves respect because the

person has been admitted for this purpose, the purpose remains unfilled, and discretionary factors such as mis-representation or criminal conduct have not provided grounds for refusal of extension or curtailment of stay.

7. The case of Patel & Others v SSHD [2013] UKSC 72 makes the same point at paragraph 57:-

57 It is important to remember that Article 8 is not a general dispensing power. It is to be distinguished from the Secretary of State's discretion to allow leave to remain outside the rules, which may be unrelated to any protected human right. The merits of a decision not to depart from the rules are not reviewable on appeal: section 86(6). One may sympathise with Sedley LJ's call in Pankina for "common sense" in the application of the rules to graduates who have been studying in the UK for some years (see para 47 above). However, such considerations do not by themselves provide grounds of appeal under Article 8, which 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.

8. The authorities indicate that, whilst an individual may desire to complete a course of study in the United Kingdom once they had started that course, that of itself is not a right protected by Article 8.
9. On behalf of the appellant reliance is placed upon the case of UKUS (discretion: when reviewable) [2012] UKUT 00307 (IAC). The case with respect of appears to relate to the exercise of a discretion. In the present circumstances no such discretion arose. The appellant had submitted all the documents upon which he relied that the documents submitted disclosed that they did not provide the required detail or show that he have the required funds for the period of time necessary. This was not where a document in number of documents was missing or that a document was in the wrong format or did not contain all the specified information. All the information on the documents showed that the appellant did not have the funds for the required period of time. In the light of that there was no discretion to be exercised.
10. The appellant's representative otherwise sought to rely upon the case of Thakur (PBS decision -- common law fairness) Bangladesh [2011] UKUT 00151. The problem with regard to that position is that there is nothing unfair in the Secretary of State requiring an appellant have sufficient funds to support himself whilst in the United Kingdom in order to be able to study and therefore requiring an individual to comply with the requirements of the Immigration Rules.
11. Whilst it is correct to say that the grounds of appeal to the First-tier tribunal to raise the issue of Article 8 that the only factors raised by the appellant relate to his desire and his commitment to complete his degree course. However there is an available means to him under the Immigration Rules by which he could complete that course. He did not meet the requirements of the rules. Whilst it is correct to say that an individual may develop a private life there is no right to education in the United Kingdom of itself that is protected by Article 8. The appellant has only advanced factors relating to his desire to continue and complete his education. That of itself

would not be a right protected by Article 8. The appellant has not advanced any other factors giving substance to claim under Article 8. There is no family life to be considered and it is only aspects of private life relating to education the appellant has put forward in support of his claim.

12. In the light of that and in the light of the case law there is nothing unfair in the respondent requiring the appellant to comply with the requirements of the rules. There is no Article 8 right to education in the United Kingdom. The factors advanced by the appellant relate to his education. In those circumstances even if the judge were required to consider Article 8 there is nothing advanced by the appellant, which constitutes a private life right engaging Article 8.
13. I did ask the parties if there was an error of law whether there was any reason why I could not deal with the appeal on the basis of the evidence thus far lodged. It was indicated that there were no other factors that the appellant wished to advance in support of his claim in respect of Article 8.
14. Even if I am wrong with regard to the issue in respect of the existence of Article 8 private life rights and the decision materially interferes with such, the decision would be in accordance with the law and for the purposes of maintaining immigration control.
15. The final issue to be determined is whether or not the decision is proportionately justified. The Immigration Rules are intended to ensure that individuals coming to study in the United Kingdom can come to study provided they have the means to support themselves. It is a highly material factor that the appellant cannot show that he can support himself in accordance with the requirements of the rules. Having regard to that even if the judge had made an error by not considering the Article 8 rights of the appellant, if I were to carry out the Article 8 exercise on the basis of the evidence, I would have found that the decision was in any event proportionately justified.
16. There is a no material error of law in the determination. I uphold the decision to dismiss this appeal on all grounds.

Signed

Date **26th February 2015**

Deputy Upper Tribunal Judge McClure