



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/22928/2014

THE IMMIGRATION ACTS

Heard at: Field House
On: 10 June 2015

Decision & Reasons Promulgated
On: 25 June 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MR AZIZ HUSSAIN
(NO ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: No attendance and no representative

For the Respondent: Mr Kandola, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The notice of hearing, setting out the date, time and place of the hearing, was sent to the appellant at his address on record on 20 May 2015. On the 10 June 2015 his appeal was stood down until after 3pm. However, neither the appellant nor any representative on his behalf attended.
2. No application for an adjournment had been made. There has been no explanation for such non-attendance. In the circumstances, I am satisfied that it is in the interests of justice to determine the appeal in the absence of the appellant.
3. The appellant is a national of Pakistan, born on 25 February 1985. He appealed to the First-tier Tribunal against the respondent's decision dated 14 May 2014 to refuse to grant him further leave to remain as a Tier 4 (General) Student.

4. The appellant did not appear before the First-tier Tribunal on the date of his scheduled appeal hearing, namely 13 November 2014.
5. First-tier Tribunal Judge Flynn was satisfied that it was appropriate to hear the appeal in his absence in accordance with Rule 28 of the 2014 First-tier Tribunal Procedure Rules.
6. The relevant facts are that in February 2011 the appellant was issued with a student visa valid until 12 October 2013. He subsequently made an application for further leave to remain as a Tier 4 (General) Student.
7. The respondent in refusing this application stated in her reasons dated 14 May 2014 that she had not awarded him any points claimed as he had not provided a Confirmation of Acceptance for Studies (CAS) that was valid. The CAS submitted with the application had been withdrawn by the sponsor. She had therefore been unable to assess the level of funds that he required.
8. The appellant's grounds of appeal before the First-tier Tribunal were as follows:

“I am not satisfied with the decision of the Home Office. I will provide the true facts before the honourable Court according to the immigration rules and regulations.”
9. The appellant however failed to submit any evidence before the First-tier tribunal to counter the respondent's assertion that his CAS was no longer valid. He did not provide any documents from the institution where he claimed to study [11].
10. In the circumstances Judge Flynn was satisfied on the balance of probabilities that he did not have a valid CAS at the date he submitted his application. He accordingly dismissed his appeal under the rules.
11. The Judge noted that the appellant did not raise Article 8 issues in the grounds of appeal. He nonetheless considered the appeal on Article 8 grounds and followed the guidance set out in Gulshan (Article 8- new rules – correct approach) [2013] UKUT 640 (IAC).
12. He noted that the appellant was aware before coming to the UK that his leave was granted only on a temporary basis. He had no reasonable expectation that he would be granted further leave to remain unless he were able to satisfy the requirements of the rules. He had not provided any evidence of any family or private life established in the UK and there are no details of any circumstances which would make it disproportionate to expect him to return to Pakistan.
13. The Judge accordingly did not consider that there was any basis upon which to conclude that the respondent's decision represented a disproportionate interference with his right to respect for his private life.

14. The appeal was accordingly dismissed both under the rules and on Human Rights grounds.
15. His grounds of appeal supporting his application for permission to appeal to the Upper Tribunal contended that he did not attend the hearing because he was unaware of the hearing date. He had indicated that he would like an oral hearing and that he would be giving evidence before the Court. The appeal should accordingly have been adjourned.
16. He also stated that the Judge made a finding on Article 8 without the appellant being heard. That was unfair. The Article 8 findings are very brief and do not deal properly with his private life, which he has established in the UK.
17. The Judge's "refusal" to adjourn the hearing without hearing the appellant on Article 8 constituted errors that were made.
18. On 8 April 2015, First-tier Tribunal Judge PJM Hollingworth granted the appellant permission to appeal. He stated that a difficulty appears to have arisen as a result of a change of address. In the circumstances, an arguable error of law has occurred since the Judge proceeded with the hearing in the absence of the appellant.
19. The appellant was then sent directions in which he was required to serve on the Upper Tribunal and on the respondent not later than 21 days after the directions were sent, an indexed and paginated bundle containing all the documentary evidence upon which it is intended to rely at the forthcoming hearing, pursuant to Rule 15(2A) and whether it is intended to develop the grounds of appeal.
20. I have had regard to a letter sent to the First-tier Tribunal on 10 February 2015 from the appellant's former solicitors, Lincolns Solicitors, in which they note that they represent the appellant. They requested a copy of the Immigration Judge's determination. Their client had not received the determination which they were informed had been sent to him on 27 January.
21. I have also had regard to the notice of hearing of his appeal before the First-tier Tribunal, dated 20 June 2014. The appellant was notified of the date, time and place of the hearing, at Taylor House on 13 November 2014. The notice was sent to the appellant at [], the address that the appellant had supplied in his appeal to the First-tier Tribunal. The address where he can be contacted was the same address to which I have referred.
22. Accordingly, the notice of hearing was sent to the appellant's address on record.
23. The appellant had been informed by way of directions which accompanied the notice of hearing that he was to supply to the Tribunal as well as the other party a bundle of the documents he wished to rely on in support of the appeal.

24. However, as noted by Judge Flynn, no such document or any evidence was submitted to counter the respondent's assertion that his CAS was no longer valid.
25. Nor has the appellant contended otherwise in his grounds of appeal addressed to the Upper Tribunal. The appellant has asserted in his current grounds in respect of which permission has been granted, that the findings relating to Article 8 private life are brief and do not properly deal with his private life and that it is simply stated that he has established a private life in the UK.
26. However, the appellant has still not provided any evidence or statement or made any submissions as to what that private life amounts to.
27. Moreover, as noted by Judge Flynn, the appellant did not raise any Article 8 grounds in his appeal before the First-tier Tribunal. He simply stated that he was not satisfied with the decision of the Home Office and would provide "the true facts" to the Court.
28. Judge Flynn went on to consider Article 8 despite the fact that they had not been raised in the grounds of appeal. I have set out his findings at paragraphs 12-13 above. Judge Flynn concluded that it would not constitute a disproportionate interference with his right to respect for private life to expect him to return to Pakistan.
29. That is a sustainable conclusion from the evidence and documentation before the Judge. It is neither irrational nor perverse.
30. No further evidence has been adduced or submissions made that renders that conclusion unsustainable.
31. In the circumstances, I find that the decision of the First-tier Tribunal Judge was in accordance with the law and the immigration rules applicable.

Notice of Decision

The decision of the First-tier Tribunal Judge did not involve the making of any material error on a point of law and shall stand.

The appeal is dismissed.

No anonymity direction is made.

Signed

Date 19 June 2015

Deputy Upper Tribunal Judge Mailer