



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

Appeal Number: IA/31615/2014

THE IMMIGRATION ACTS

**Heard at Birmingham Employment
Tribunal
On 21 July 2015**

**Decision and Reasons
Promulgated
On 31 July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

**TAHIR ABBAS
(NO ANONYMITY ORDER)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Sajid, Shehzad Law Chambers, Birmingham

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Mr Abbas argues that First-tier Tribunal Judge Dhanji erred in law when determining his appeal against the immigration decisions of 24 July 2014 refusing to vary his leave to remain as a tier 4 (general) student migrant and to remove him by way of directions. Judge Dhanji's decision and reasons statement was promulgated on 1 December 2014, having determined the appeal without a hearing because the appellant had only paid the lower appeal fee.

2. The grounds of appeal to the Upper Tribunal are that there was a procedural error because Mr Abbas had received no reply from the First-tier Tribunal to his application of 14 October 2014 for the time given to comply with directions to be extended for two months. Mr Abbas position is that had he been given the additional time requested, then he would have provided further evidence which would have had a material bearing on the outcome of the appeal.
3. Before hearing from the representatives I informed them that the appeal file shows that on 17 October 2014 the First-tier Tribunal issued notices to the parties refusing the application to extend the time available to comply with directions. Mr Sajid said that he had not received any correspondence from the Tribunal but he would like an adjournment to check his file which he did not have with him at the hearing. I refused to adjourn because I have to assume that Mr Sajid would have checked his file carefully before making an application for permission to appeal on this very basis. To conclude otherwise would be to suggest that Mr Sajid was deliberately seeking to mislead the Tribunal.
4. Mr Sajid relied on the grounds of appeal. He had little else to say other than he had with him a number of documents in support of Mr Abbas's EEA case including evidence that he married yesterday.
5. I asked Mr Sajid a number of questions which unfortunately he did not appear to have anticipated. My first question was why he thought that the mere application to move the date for compliance with directions might have changed the date stated in the Tribunal's directions of 17 September 2014. Mr Sajid did not seem to comprehend that the date stated, which was 15 October 2014, remained in force unless superseded. Therefore, the fact Mr Sajid relied on the fact that he had received no response to his application of 14 October 2014 could only mean that he would have advised Mr Abbas that the date for complying with directions remained as 15 October 2014.
6. My second question related to why Mr Sajid did not think to chase up his application if he had not had any reply. As I have indicated, the appeal file clearly indicates that the application was refused on 17 October 2014 and that notice to that effect was sent to both parties. The Tribunal would have presumed that such notice would have been received unless the contrary was shown. Mr Sajid thought it was enough to have made the application and to wait indefinitely for a response. That is clearly unreasonable and unprofessional behaviour, particularly given the fact there was no basis to think that the date for complying with directions had been moved.
7. My third question focused on whether Mr Sajid understood how important it is for a party to cooperate with the Tribunal in order to do justice. It would appear that Mr Sajid seeks to lay blame at everyone else's feet rather than accept any responsibility. For example, when asked why he had not chased his application to have a new date for complying with directions he merely said that Mr Abbas had failed to give instructions.

That is utter nonsense since it is clear from the very fact that the application was made that Mr Abbas had given such instructions.

8. The failure of Mr Sajid to cooperate with Tribunal proceedings is further indicated by his inability to comply with directions relating to this hearing. Despite directions being issued that any further documents must be submitted at least 14 days before the hearing, as indicated above Mr Sajid attended with a large bundle which he expected would be admitted. His explanation for the delay was that Mr Abbas only married yesterday. Mr Sajid was unable to provide any reasonable explanation as to why he had not complied with direction insofar as the other documents were available earlier, bearing in mind that he would have been able to submit evidence of then pending marriage as it would have had to have been booked some time ago. Mr Sajid's only explanation was that Mr Abbas did not give instructions.
9. My fourth area of questioning related to the background to the application to delay the deadline for compliance with the First-tier Tribunal's directions. As I have indicated above, Mr Abbas appealed against the refusal of further leave as a student and the decision to remove. In his grounds he drew attention to the fact that he also relied on EU law and provided limited evidence of his relationship with an EEA national. He wanted more time to produce more evidence.
10. This is a clear admission that Mr Sajid knew that the evidence provided to the First-tier Tribunal was not sufficient to discharge the burden of proof. Yet, rather than assist Mr Abbas and the Tribunal by acting diligently, Mr Sajid thought he had done enough by asking for a further two months to provide evidence. It is noted by Judge Dhanji that no further evidence had been submitted despite his not determining the appeal until five weeks after the deadline for further documents and submissions. I also take account of the fact that no further evidence has been submitted thereafter despite various opportunities being available and despite the Upper Tribunal's directions. Such failures merely weaken the grounds of appeal to the Upper Tribunal.
11. In light of these points, I did not need to hear from Mr Mills. I find there is no legal error in Judge Dhanji's decision and reasons statement. The appellant had failed to comply with directions and had failed to produce evidence to discharge the burden that was on him in relation to the grounds of appeal on which he relied before the First-tier Tribunal.
12. I add, as I indicated at the hearing, that I am making no findings as to whether Mr Abbas is married to an EEA national who is exercising EU law rights in the UK. If he wishes to obtain confirmation that he has a derived right of residence he can, and no doubt will, make the appropriate application to the Home Office supported by relevant evidence. My decision is simply that Judge Dhanji did not err on a point of law.

Decision

The decision and reasons statement of Judge Dhanji does not contain an error on a point of law and his decision stands.

Signed

Date

Judge McCarthy
Deputy Judge of the Upper Tribunal