



IAC-PE-SW-V1

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

Appeal Numbers: IA/37907/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8th October 2015**

**Decision & Reasons Promulgated
On 28th October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

**AMJAD ALI AMJAD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Saini - Counsel

For the Respondent: Mr Wilding - Senior Home Office Presenting Officer

DECISION ON ERROR OF LAW

1. The Appellant is a citizen of Pakistan born on 11th March 1988. He appeals against the decision of First-tier Tribunal Judge Aujla issued on 5th May 2015, dismissing on human rights grounds his appeal against the decision of the Respondent made on 9th September 2014 to refuse further leave to remain as a Tier 4 (General) Student and to remove him from the United Kingdom by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The Secretary of State refused the application because the Appellant had not provided a Confirmation of Acceptance for Studies certificate (CAS) and had not demonstrated the required English language proficiency.
3. Permission to appeal was granted by First-tier Tribunal Judge Chambers on 10th July 2015. He said:
 - “2. The grounds aver that the Judge did not consider Article 8 ECHR; that principles of common-law fairness should have been applied in the Appellant’s favour and that the Appellant was a victim of injustice.
 3. The Appellant said in evidence that he was unable to submit a CAS with his application because he did not have an English language certificate.
 4. The case raised in the grounds seems to have been that the Appellant could not sit an English test in order to obtain a CAS without his passport which was with the Respondent.
 5. The decision was not made until 9th September 2014. The application was made in July of that year when, in the same month, the Appellant through his representatives was pressing the Respondent to give an attested copy of the passport to enable the Appellant to sit the English language test.
 6. Although there is no prospect on the authorities of the Article 8 limb of the appeal succeeding it is arguable that insufficient consideration was made to the ‘Catch 22’ situation the Appellant found himself in thus probably requiring consideration of the common-law fairness argument.”
4. The position of the Home Office as set out in a Rule 24 response to the Grounds of Appeal is that it is not the case as stated in the grounds that the Appellant is in the middle of his studies. It is clear from his own evidence that he is not. It is said that if the Appellant made his application prior to gaining his English language requirements that mitigates against the finding that the Respondent acted unfairly.
5. To elaborate somewhat on the grounds it is submitted that the decision of the Tribunal is not fair on the Appellant. The Secretary of State acted contrary to her common-law duty to act fairly. Reliance is placed on **Thakur (PBS decision - common-law fairness) Bangladesh [2011] UKUT 00151** and **R (on the application of Q and Others) v SSHD [2003] EWCA Civ 364**. It is submitted that the Appellant is in the middle of his studies and cannot be removed at this moment in time. The Court of Appeal decided in **QY China v SSHD [2009] EWCA Civ 680** that removing a student in the middle of his studies would constitute a breach of Article 8 ECHR.
6. The immigration history of the Appellant can be summarised as follows. He arrived in the UK on 4th October 2011 with entry clearance as a student valid from 24th August 2011 until 28th December 2014. His leave to remain was curtailed at some time in 2014 to expire on 8th July 2014. On 3rd July 2014 he applied for further leave to remain as a Tier 4 (General) Student. It was conceded by the Appellant’s representative at the hearing before Judge Aujla that the Appellant did not satisfy the requirements of the Immigration Rules. At paragraph 19 of the determination Judge Aujla says:

“Mr Eruwa made submissions on behalf of the Appellant. He relied on the Appellant’s Grounds of Appeal and submitted that the Appellant satisfied the requirements of paragraph 276ADE although he was unable to assist me as to how that was the case. He had nothing further to add.”

7. Judge Aujla noted that the Appellant had relied on the sole ground of Article 8 in respect of his private life. He found that the requirements of paragraph 276ADE were not met. There was no discussion about unfairness. There is nothing in the Record of Proceedings to indicate that this was raised and it was not raised in the original Grounds of Appeal. It seems to me therefore that there was no basis on which the Judge was required to consider the issue of common-law fairness. It quite simply had not been raised before him.
8. The position of the Appellant’s representative at the hearing before me was that it was ‘Robinson obvious’ and ought to have been considered. It could be implied that the decision of the judge was unfair in all the circumstances and he ought to have considered procedural unfairness.
9. The position of Mr Wilding was that the Appellant had made no effort to find another college once he knew that the college he had applied to had had its licence revoked. He said there was no evidence of efforts to obtain a copy of the passport from the Home Office. He said that the Appellant had been given 60 days to find a new college but had not done so. Mr Wilding also relied on paragraph 46 of **Patel (consideration of Sapkota - unfairness) India [2011] UKUT 484** in which the court said:

“Where the Appellant is legally represented, it is difficult to complain that the decision was wrong in law where the complaint is a failure to address an issue that was never raised when it could have been. The absence of reasoning on the issue is understandable.”

Findings on Error of Law

10. I have some sympathy with the Appellant in this case because I am aware that it is sometimes difficult to achieve the return of a passport that is in the hands of the Home Office. I also appreciate that the Appellant in this case was under pressure to submit his application for further leave prior to the expiry of his leave on 8th July 2014. He therefore submitted the application without either a CAS or an English language certificate. For some reason there is nothing before me to show when his leave was actually curtailed or how long he had although Mr Wilding did make a reference to May 2014 when submitting that there was no evidence of the Appellant’s attempt to get either the passport or an English language certificate. There is nothing in the determination of the Judge or in the Record of Proceedings to indicate that he was made aware of the attempts to get the passport from the Home Office or of any attempt to get a CAS or the English language requirement. Certainly no submissions were made to him about unfairness. The case as it was put to me in the Upper Tribunal was different to that put before the Judge. It was the submission of Mr Saini that there was impliedly unfairness. I can see that this may have had some merit had the Judge been made aware of all the circumstances in this case but he was not.

Indeed reliance was placed solely on paragraph 276ADE despite the fact that according to Judge Aujla the representative was quite unable to explain how the Appellant could succeed under that provision. He clearly could not. Article 8 was relied upon by Mr Saini at the hearing before me, in particular the decision CDS (Brazil) [2010] 305 although I have to say that although this was in the original Grounds of Appeal it was not referred to in the grounds seeking permission. What the Tribunal said in that case was that people who have been admitted on a course of study at a UK institution build up social ties during the period of study and this may amount to a private life that deserves respect. The Appellant in this case has not been admitted on a course of study. I do not see that that case applies. In any event again there is nothing to suggest that this was put before Judge Aujla with submissions as to why the case would apply.

Notice of Decision

I find that there is no material error of law in the determination of Judge Aujla and that decision shall stand.

No anonymity direction is made.

Signed

Date: 26th October 2015

N A Baird
Deputy Upper Tribunal Judge Baird