Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/28576/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17 March 2016	**On 31 May 2016**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

SUKHJEET SINGH

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Otchie, Counsel
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal is not subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party has invited me to make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) and I have not done so.

2. The appellant appeals against the decision of the First-tier Tribunal (Judge Wyman) dismissing the appellant's appeal against a decision taken on 14

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July 2014 to refuse his application for further leave to remain as a Tier 4 student.

Introduction

3. The appellant is a citizen of India born in 1990. He applied for further leave to remain as a Tier 4 student on 31 March 2014 but that application was refused because the respondent was not satisfied that he met the requirements of paragraph 245ZX(a) of the Immigration Rules. The respondent alleged that his TOEIC certificate from ETS had been obtained by deception, following an investigation by ETS.

The Appeal

4. The appellant appealed to the First-tier Tribunal on Article 8 grounds but failed to attend an oral hearing at Hatton Cross on 25 August 2015. He was not represented. The First-tier Tribunal found that the appellant had not provided any additional information regarding his Article 8 links to the UK, only ever had a temporary visa and had not explained his unique circumstances. He did not meet the requirements of the Rules.

The Appeal to the Upper Tribunal

5. The appellant sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law by failing to make any findings in relation to paragraph 276ADE of the Rules or as to whether Article 8 was engaged. There was no proportionality assessment.

6. Permission to appeal was granted by First-tier Tribunal Judge McDade on 28 January 2016 on the basis that it was arguable that there was a failure to demonstrate that a structured approach was taken to Article 8.

7. In a rule 24 response dated 11 February 2016 the respondent submitted that the appellant had failed to attend the oral hearing or to provide any evidence regarding his Article 8 links to the UK. Any error was not material.

8. Thus, the appeal came before me. The appellant was represented by Counsel but again failed to attend. I am satisfied that the appellant had been notified of the hearing and that it was in the interests of justice to proceed with the hearing.

Discussion

9. Mr Otchie submitted that there was a low threshold to engage Article 8. The appellant had private life as a student. The consideration of Article 8 was inadequate. The European Convention should have been dealt with properly.

10. Mr Kotas submitted that the grounds of appeal to the First-tier Tribunal did not mention paragraph 276ADE and that could not be properly raised now. The judge said at paragraph 19 of the decision that there was very little evidence of private life in the UK and immigration status was precarious in any event. There was still no Article 8 evidence. It was not clear why the judge thought that the appellant had some kind of leave when he made his application. A wasted costs order should be considered because this was an appeal for the sake of an appeal.

11. Mr Otchie submitted in response that the appellant had made an in time application which gave him a right of appeal. This was an ETS case and the judge did not consider that testing might be unreliable.

12. I find that there was no ground of appeal to the Upper Tribunal in relation to the Immigration Rules (except for paragraph 276ADE) and no possible ETS issue was mentioned in the permission to appeal. I therefore decline to consider the ETS testing process.

13. I do not disturb the previous findings that the First-tier had jurisdiction to decide the appeal. That was not mentioned in the respondent's Rule 24 response and there is no cross-appeal.

14. Paragraph 276ADE of the Rules was not mentioned in the grounds of appeal to the First-tier and there is no evidential basis upon which the appellant could succeed under that provision.

15. The judge did not refer to the Razgar tests or to sections 117B-D of the 2002 Act. I therefore find that consideration of Article 8 was inadequate. That is a material error of law and I set aside the decision.

16. I remake the decision by dismissing the appeal. The appellant entered the UK on 16 December 2009 and states that he lives with his sister and brother in law in Southall. I accept that he has developed a private life in the UK but his immigration status has always been precarious and I give little weight to that private life under section 117B of the 2002 Act. There is no evidence of family life. There is no evidence of any other relevant factors under sections 117B-D of the 2002 Act. I find that removal of the appellant would be in accordance with the law because he does not meet the requirements of the Rules. I find that Article 8 is engaged because the appellant has developed a private life in the UK. Removal would interfere with his right to private life. I find that in all of the circumstances of this case, any interference in the appellant's right to private life in the UK is proportionate to the legitimate objective that is sought to be achieved, namely the maintenance of an effective system of immigration control. The Article 8 claim must therefore fail.

Decision

17. Consequently, I set aside the decision of the First-tier Tribunal. I remake the decision by dismissing the appellant's appeal.

18. I decline to make a wasted costs order. Permission to appeal to the Upper Tribunal was granted on a sound basis. The failure of the appellant to attend to Upper Tribunal does not in itself justify a wasted costs order, particularly as he was represented by Counsel.

Signed

Judge Archer
Deputy Judge of the Upper Tribunal
Date 27 May 2016