



IAC-FH-NL-V1

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

Appeal Number: IA/39990/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 1 April 2016**

**Decision &
Promulgated
On 19 April 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**SHIPLU KUMAR BARMON
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Bhulyam, Legal Representative
For the Respondent: Mr C Avery, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh and his date of birth is 18 December 1978. He appealed against the decision of the respondent dated 25 September 2014 to refuse to grant him leave to remain in the United Kingdom as a person entitled to leave to remain as a Tier 4

(General) Student Migrant pursuant to paragraph 245ZX of the Immigration Rules as set out in HC 395 as amended.

2. Permission to appeal was granted by First-tier Tribunal Judge P J M Hollingworth on 21 January 2016 stating that it is arguable that the judge should have considered whether the respondent's decision was in breach of Article 8 of the European Convention on Human Rights.
3. The grounds of appeal essentially state that the decision of the Secretary of State is unlawful under Article 8 and Article 2 of the Protocol of the European Convention on Human Rights. The appellant is in the middle of his studies as along with his main course he is pursuing a part-time course with Anglia Ruskin University and he cannot be removed at this particular moment of time. The case of **QY (China) v SSHD [2009] EWCA Civ 680** was referred to for the proposition that his removal from the country would breach his rights under Article 8.
4. The respondent in her Rule 54 response stated that it is incumbent on the appellant to ensure that he meets the requirements of the Immigration Rules on application. The respondent further states that while it is accepted that the judge has not made findings on Article 8 it would be argued that the appellant's application to the Secretary of State was not based on his private or family life. It also notes that the appellant asked for a paper appeal and he was not before the judge to give any evidence in relation to what constitutes his private life.
5. At the hearing Mr Bhulyam on behalf of the appellant relied on his skeleton argument which I have pursued. He made no further submissions.
6. Mr Avery in his submissions stated that the appellant did not appear before the Immigration Judge and there was no evidence before the Immigration Judge that he can see from the determination that the judge did not take into account. The appellant has been here as a student for seven years and even then has not been able to pass the English language test which is a cause for concern. He cannot see any material error of law in the determination.

My Findings

7. I find that the appellant has been in this country for seven years as a student and now wishes to continue living in this country even though he cannot meet the requirements of the Immigration Rules which are Article 8 compliant. While I accept that the judge has not considered Article 8 in respect of the private life I find that the appellant who has been in this country on a temporary basis would have had no expectation that he can continue to live in this country unless he met the requirements of the Immigration Rules. There is no dispute that he does not meet the requirements of the Immigration Rules and therefore there is no private life in this country worthy of protection. In any event I find a differently

constituted Tribunal would not come to a different conclusion. There is no error of law in the determination and I uphold the determination of the First-tier Tribunal Judge Ian Howard.

Notice of Decision

The appeal is dismissed

No anonymity direction is made.

OR

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date this 4th day of April 2016

Deputy Upper Tribunal Judge Chana

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 4th day of April 2016

Deputy Upper Tribunal Judge Chana