Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/49374/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 February 2016	**On 18 February 2016**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

and

SHAHID MAHMOOD
(ANONYMITY DIRECTION NOT MADE)

Claimant

Representation:
For the Respondent: Mr T Wilding, Home Officer Presenting Officer
For the Respondent: Ms F Shaw, Counsel, instructed by Morgan Mark Solicitors

DECISION AND REASONS

1. The respondent appeals with permission against the decision of First-tier Tribunal Judge Symes promulgated on 7 August 2015 in which he allowed the claimant's appeal against the decision of the Secretary of State made on 27 November 2014 to refuse him further leave to remain in the United Kingdom and to remove him pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The claimant is a citizen of Pakistan who was granted leave to enter as a Tier 4 Student Migrant on 20 April 2008 until 7 September 2009. His leave to remain in that capacity was extended on several occasions, the last grant being until 30 November 2014 to allow him to undertake a Diploma

in Sales and Marketing Management at Middlesex International College ("MIC"), but on 27 June 2014, his leave to remain was curtailed to 31 August 2014. That decision was taken as the college at which he was studying and was sponsoring him had had its licence revoked. The claimant was, as is usual, given 60 days leave in order to obtain a new sponsor. After contacting some 20 colleges he was able to obtain a conditional offer to study and London College of Advance Management ("LCAM") on a course running from September 2014 – September 2015 leading to a Level 7 Diploma in Healthcare Management and on 28 August 2014 applied to the respondent for further leave to remain as a student. LCAM having assured him that they would be able to assign a Certificate of Acceptance for Studies ("CAS").

3. On 27 November 2014, the Secretary of State refused the claimant's application for further leave on the basis that he had no CAS number had been submitted with his application.

4. The claimant's case is that LCAM had assured him that they would issue a CAS once his application had gone through with the respondent, but in November 2014, he learned that LCAM no longer appeared on the list of Educational Sponsors on the Home Office website, and that LCAM's office was no longer at the address given. He attempted to obtain a CAS from another college, but was unable to do so as his original documents and passport were held by the respondent. The claimant wrote to the Secretary of State to explain his problem, but his application was nonetheless refused.

5. The claimant's case is that he wished to finish his MABA, and to have the career in banking in Pakistan which he had long planned. He has spent a considerable amount on his studies here, and would face irreparable loss if he had to return to Pakistan.

6. The respondent was not represented at the hearing before the First-tier Tribunal on 23 July when Judge Symes heard evidence from the claimant and submissions made on his behalf.

7. In his decision, the judge held:

   (i) The claimant was a genuine student on a course of studies planned to culminate in and MBA; that he had successfully found a place to study (LCAM) after his previous college had lost its licence; had unsuccessfully sought another sponsor, and had sought to inform the Secretary of State of this [12];

   (ii) The claimant could not meet the requirements of the Immigration Rules [14]; and, [15] that the decision was in accordance with the law, LCAM having failed to issue the applicant with a CAS and he was thus disqualified under the respondent's policy of given innocent victims of licence revocations a period of grace;

   (iii) Having had regard to Nasim & Ors (Article 8) [2014] UKUT 25 (IAC) [18], that this was a case where the claimants studies were clearly central to his personal and professional identity, and was not a case where the private life asserted merely amounts to the "opportunity

for a promising student to complete his course in this country" held in Patel v SSHD [2013] UKSC 73to be an insufficient basis to found a protected Article 8 interest [19];

(iv) The claimant has established a private life in the United Kingdom [20]; the frustration of his ambitions in light of his significant investment and long period of lawful residence is a serious interference with his private life;

(v) While, having had regard to section 117B of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") is to be given only limited weight [21], there was no significant public interest requiring his departure until the purpose sought to be achieved by the original provision of a sixty day window is completed [21];

8. The judge therefore allowed the appeal under the Human Rights Convention.

9. The Secretary of State sought permission to appeal on the grounds that the judge had materially misdirected himself:

(i) in finding the claimant's circumstances could be readily distinguished from those in Nasim, this claimant's case being weaker that those considered in Patel at [57]-[59] given the provisions of section 117A to 117D of the 2002 Act;

(ii) in directing himself that "limited" weight rather than "little" weight as mandated by section 117B (5) of the 2002 Act was to be applied to the claimant's private life; and, had the correct test been applied, the appeal would inevitably have been dismissed.

10. Permission to appeal was granted by the First-tier Tribunal on 17 December 2015.

Submissions

11. Mr Wilding submitted that, contrary to what the judge had found, this case fell clearly within the class of cases identified in Patel at [57], and to which the Upper Tribunal had referred in Nasim at [19]. He submitted that there was, in reality, nothing in the claimant's case to take it outside those parameters. That was not to say there could never be an article 8 case, and all the factors referred to by the judge, including the claimant's self-identification were all considered in Nasim, there being nothing in this case to distinguish it.

12. Mr Wilding submitted also that the distinction between "limited" and "little" was not merely semantic, but in the context of concluding this was not a "Nasim" case, was a distinct, material error.

13. Ms Shaw submitted that the judge had given proper reasons for distinguishing Nasim, the claimant having here been issued with a 60 day leave period, of which he had not, owing to an inability to obtain documents, been able properly to avail himself. As he had not had his passport or other documents, he had been unable to obtain a CAS. It was

also evident from the decision at [22] that it was this consideration which concerned the just.

14. Ms Shaw submitted further that a further difference in this case was the claimant's long term career path, and the fact that he was prevented from achieving it. There was no indication that the judge had not had proper regard to the relevant case law, or that he had not properly applied it.

15. In addition, Ms Shaw submitted that there was in reality no distinction capable of being drawn between "little" and "limited".

16. In reply, Mr Wilding submitted that there was in any event little evidence that the claimant had sought to obtain his documents from the Home office, the letter in the bundle being dated 29 November 2014, after the date of decision. He submitted also that, as the claimant had confirmed, he was not in the middle of a course of study, and was seeking to do a new course.

Did the decision of the First-tier Tribunal involve the making of an error of law?

17. I am satisfied that, for the reasons set out below, that it did.

18. In this case, the claimant's sponsor MIC had its licence revoked and his leave was curtailed. There is no indication that at that point, his documents were held by the respondent; after all, he had valid leave and there was no application pending, nor was there until 28 August 2014. He had been able to obtain a conditional offer from LCAM (not, it would appear, a CAS). It is implicit in the acceptance of the 28 August application as valid (and from the documents listed within it which must be sent to the Home Office at pages 7 and 11) that the relevant, original documents and passports were sent in support of that application, and it was because that application was pending, that he was not able to apply to another college for a CAS after 28 August 2014, and after he found out that LCAM was no longer a sponsor. It is also important to observe that LCAM did not in fact issue a CAS, as the judge noted [15].

19. It cannot therefore be properly argued that the purpose of the 60 day period granted to the claimant to find an alternative sponsor was frustrated by any action of the respondent in retaining documents; that difficulty arose after they had been submitted on 28 August 2015, shortly before the 60 day period expired.

20. It must be borne in mind what the Supreme Court held in **Patel** at [57]:

> "It is important to remember that article 8 is not a general dispensing power. It is to be distinguished from the Secretary of State's discretion to allow leave to remain outside the rules, which may be unrelated to any protected human right. The merits of a decision not to depart from the rules are not reviewable on appeal: section 86(6). One may sympathise with Sedley LJ's call in *Pankina* for 'common sense' in the application of the rules to graduates who have been studying in the UK for some years … However, such considerations do not by themselves provide grounds of appeal under article 8, which is concerned with private or family life, not education as

such. The opportunity for a promising student to complete his course in this country, however desirable in general terms, is not in itself a right protected under article 8."

21. Considering also the decision in Nasim at section C in particular, I do not consider that the facts of this appeal, and the circumstances of this claimant are distinguishable. As Mr Wilding submitted, the factors identified at [5] and [10] are in reality no different from those in Patel. Nothing other than continuation of studies is identified and it would appear that a fresh course is being contemplated rather than the continuation of a previous course. The length of time spent in studies is not factor that alters this in any way.

22. Further, although the claimant had been unable to obtain a CAS, that was not through the fault of the respondent, and what he is seeking is, in reality a further period of 60 days to find a proper sponsor as he had not been able to do so in the previous 60 day grace period; it cannot be argued that that arose from any actions on the part of the respondent. As the judge noted [15] and [16], this is not a case in which it could be said that the respondent acted unfairly.

23. While it is evident from [19] and [20] that the judge did give reasons for concluding that there was, unusually, a private life in this case, I am not satisfied that the reasons are sufficient to explain why that is so, in the light of Patel and Nasim.

24. Further, even if that were the case, there is simply no indication that the necessary weight was attached to the public interest in removal. While I accept Ms Shaw's submission that the distinction between "limited" and "little" is of no import, the analysis of the weight to be attached to the public interest in removal is lacking. It is perverse, having found the Secretary of State has not acted unfairly, to in effect lessen the public interest in the maintenance of Immigration Control where the requirements of the rules have not been met, on that basis. Similarly, bearing in mind what was said in Nasim at [20 and [21], the reasons given for finding removal to be disproportionate are neither adequate nor sustainable.

25. Accordingly, as I announced during the hearing, the decision of the First-tier Tribunal involved the making of an error of law and I set it aside. I therefore turn to remaking the decision.

Remaking the decision

26. Ms Shaw did not seek to adduce additional evidence, nor did she seek to call the claimant.

27. Mr Wilding submitted that, relying on Nasim at [20] and [21] and also [25]-[27] in particular, it could not be said that the claimant had established a private life here; or, that if he had done so, his removal was not proportionate.

28. Ms Shaw relied on her previous submissions, adding that the claimant had through no fault of his own been prejudiced by the Secretary of State's retention of documents, and that he had attempted to resolve this matter by contacting the Home Office by telephone. All he was, in reality, seeking was 60 days leave to obtain another sponsor which was in line with policy.

29. In re-making the decision, while I have some sympathy with the claimant, there is nothing before me which I consider takes him outside the class of students referred to in Patel at [57]. The factors found by Judge Symes at [20] and noted at [5] are clearly not sufficient to create a private life, even taking into account the length of time spent here, there being little evidence of the content of his life beyond studies. Further as I noted above there is a break in his studies now. For these reasons, I am not satisfied that article 8 is engaged.

30. Even were I satisfied that article 8 were engaged, I am not satisfied that the interference caused – a break in the claimant's studies which are not mid-course – is sufficiently serious to amount to an interference. Further, I am not satisfied that any such interference would be disproportionate. The claimant's status is unarguably precarious and little weight can be attached thereto. There is, I find, a significant weight to be attached to the public interest in maintaining immigration control which includes the removal of those who do not meet the requirements of the Immigration Rules. For the reasons set out above at [18] and [19] of my decision, the reality is that the claimant did obtain 60 days' leave to find another sponsor. He did not find a satisfactory one in LCAM, but it cannot be said that difficulties in obtaining yet another sponsor outside the 60 day period are any proper reason for lessening the public interest, nor can it be said that there was any real frustration of the purpose of the 60 day period; the claimant did find another college, albeit one that, it appears, took his money but did not issue a CAS.

31. Accordingly, I am not satisfied that the claimant's removal would be in breach of his rights under the Human Rights Convention, and I remake the decision by dismissing his appeal on all grounds.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal did involve the making of an error of law and I set it aside.

2. I re-make the decision by dismissing it on all grounds.

Signed Date: 12 February 2016

Upper Tribunal Judge Rintoul

TO THE RESPONDENT
FEE AWARD

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

Signed Date

Upper Tribunal Judge Rintoul