Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/25632/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14th September 2018	**On 16th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

OKILKHON FATTAKHOV
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Balroop of Counsel
For the Respondent: Mr Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Uzbekistan. He was born on 2 June 1988.

2. He appealed against the respondent's decision dated 4 November 2016 to refuse his human rights claim.

3. Judge Pedro (the judge) in a decision promulgated on 17 May 2018, dismissed the appellant's appeal. He found the respondent's decision was proportionate and that there were no compelling circumstances to allow the appeal under Article 8.

4. The grounds claim the judge erred because there were exceptional circumstances.

5. Judge Hollingworth granted permission to appeal on 6 July 2018. He said:

> *"It is arguable that the judge has attached insufficient weight to the factors advanced on behalf of the appellant in the context of the complaint upheld by the OISC taking into account the chronology and the particular matters advanced at paragraphs 13 and 14 of the permission application. It is arguable that the outcome of the proportionality exercise has been affected:"*

6. Mr Melvin handed up his Rule 24 response. The appeal had turned on the appellant's private life outside the Immigration Rules and there were no compelling circumstances in that regard. The judge made findings at [17]–[19] of the decision which were open to him on the evidence. The issue was the negligence on the part of the appellant's previous representatives which the judge took into account as indeed had the respondent in the decision.

Submissions on Error of Law

7. The judge found at [19] inter alia that the appellant:

> "… … *appears to have been looking anxiously from about 2014 onwards to find any means, merited or otherwise, by which he could possibly extend his stay in the United Kingdom.*

8. Mr Balroop submitted that the judge gave no reasons for that finding and more importantly, there was no basis for the same which highlighted the mindset of the judge and infected his assessment of proportionality.

9. There was a complaint to the OICS in terms of assessment of exceptional circumstances, however the Secretary of State did not refer to the findings made by the OISC, which report found:

   (a) the documents supplied in support of the application were mainly academic records. There did not seem to be any documents to support the Article 8 claim [29];

   (b) EU Migration were unable to provide further information on the advice and services provided to the appellant [30];

(c) there was no evidence that the appellant was made aware in writing that he did not meet the requirements of FLR.FP that it was likely to be refused [33] there was an attendance note of a copy of refusal letter by post but no evidence that that was done [36].

10. The appellant sought advice in relation to obtaining a CAS for his outstanding application. He was not advised in relation to his Tier 4 application which was refused with a right of appeal. Instead, he was advised to vary his application to an Article 8 application with no merit and to compound matters further, when the application was inevitably refused and certified, the appellant was not informed.

11. The appellant was not advised to request more time from the respondent to obtain a CAS or appeal the decision to refuse. He was not given the opportunity to re-apply as a Tier 4 Student when his Article 8 application was refused because he was not informed until he was an overstayer of three months' duration. Although the fault was not on the part of the respondent, the grounds argue that the circumstances created an unjustifiably harsh consequence for the appellant and his family. The grounds claim that S.117B is not limited to five criteria and all circumstances must be considered. Further, if the appellant's circumstances were properly considered they could have outweighed the public interest.

12. Mr Melvin relied upon the Rule 24 response.

Conclusion on Error of Law

13. I have considered [29] of **Mansur (Immigration advisor's failings: Article 8) Bangladesh [2018] UKUT 274 (IAC)**:

> *"29. Mr Duffy submitted that the appellant's 'lack of culpability' reduces the weight to be placed on that public interest. A lack of culpability is, however, a necessary but not a sufficient factor. Even where the person concerned is not to be taken as sharing the blame with his or her legal adviser, it will still be necessary to show that the adviser's failure constitutes a reason to qualify the public interest in firm and effective immigration control."*

Mr Balroop's submission was that, as expressed at [13]–[14] of the grounds, the appellant's representative's negligence was such as to qualify the public interest. In particular, that the circumstances were considered by the respondent for *"exceptional circumstances"* for Article 8 but not for whether the appellant could have achieved ten years' lawful residence.

14. It is worth considering the headnotes of **Mansur**:

> *"(1) Poor professional immigration advice or other services given to P cannot give P a stronger form of protected private or family life than P would otherwise have.*
>
> *(2) The correct way of approaching the matter is to ask whether the poor advice etc that P has received constitutes a reason to qualify the weight to be placed on the public interest in maintaining firm and effective immigration control.*
>
> *(3) It will be only in a rare case that an adviser's failings will constitute such a reason. The weight that would otherwise need to be given to that interest is not to be reduced just because there happen to be immigration advisers who offer poor advice and other services. Consequently, a person who takes such advice will normally have to live with the consequences.*
>
> *(4) A blatant failure by an immigration adviser to follow P's instructions, as found by the relevant professional regulator, which led directly to P's application for leave being invalid when it would otherwise have been likely to have been granted, can, however, amount to such a rare case."*

15. The respondent took into account the appellant's poor service from his representatives under "*exceptional circumstances*". There was a reference to the completion of ten years' lawful service and the claim that the appellant's current representatives considered the gap was due to the negligence of EU Migration Services such that it is inaccurate to say that the judge failed to consider the same. See in particular [16]–[19]. These were issues put to the judge at the hearing by Mr Balroop and in that sense, the grounds amount to nothing more than a restating of the appellant's case.

16. The judge's comments at [19] of his decision which I have referred to at [7] above have been quoted out of context. The judge did give reasons for what he said at [19]. He took into account the OISC and the appellant's immigration history. The comments he made regarding which Mr Balroop complains (see [7] above) show no adverse "*mindset*" or "*infection*". The complaint in that regard is not made out and discloses no error of law.

17. The judge did not err in his analysis. He carried out a comprehensive and careful assessment of all of the evidence put before him but for the reasons he set out, he did not find the appellant's circumstances to be exceptional. That was a finding he was entitled to come to on the evidence before him.

Notice of Decision

18. The judge did not materially err in his decision which shall stand.

Anonymity direction not made.

Signed Date 14 September 2018

Deputy Upper Tribunal Judge Peart