



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

Appeal Number: IA/26206/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 22nd May 2014**

**Determination
Promulgated
On 01 July 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE WILSON

Between

SAMEERA HESHAN JAYALATH GODE WITHARANGE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jaisiri

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Youngerwood who, whilst rejecting the Appellant's appeal under the Immigration Rules, allowed the appeal under human rights Article 8 on consideration of the Appellant's private life. The general background to

this matter is most unfortunate there is no dispute that the Appellant prior to his commencement of studies at the University of Sunderland had a very severe road accident outside the United Kingdom as a result of which he could not commence his studies at this specified time. Leave was given in the 1st Tier to the Respondent to appeal the decision. I have continued the usage of Appellant and Respondent as in the 1st Tier but of course it is the Respondents appeal. After hearing submissions from both advocates I reached the following decision which I announced in court to the parties.

2. The evidence before the judge as to that is set out in paragraph 5, the Appellant had gone to Sri Lanka on 22nd April 2013 to visit his father who had been unwell but he then himself suffered an accident which prevented him coming back to the UK at the scheduled time and prevented him attending his first day of induction at Sunderland University. The Judge goes on to say that the Appellant informed Sunderland University and that they told him that they could join the next semester. However decided not to wait the Appellant came to the UK on 18th May 2013. By that time of course Sunderland University had contacted the UKBA he had not enrolled and hence the curtailment happened.

3. The judge in his analysis at paragraph 19 after effectively summarising the above says

“In these circumstances I take the view that cumulatively his rights under Article 8 are engaged. I therefore proceed to consider in accordance with the well-known principles of **Razgar** whether the decision is in the event necessary for the purposes of immigration control and is lawful and proportionate to that aim.”

4. No other reasons are set out and of course no one is attributing any moral or factual blame to the Appellant, it is just one of those difficulties that has occurred. Essentially the argument between the Appellant and Sunderland University was frustrated by reasons outside the control of either party to the contract.

5. The Respondent has filed a Notice of Appeal which makes reference to **Gulshan** and other matters. Whilst that in itself possibly would not give rise to an error of law, I am satisfied the judge has not adequately set out what the public interest is, what issues he is balancing out and what is necessary and proportionate in a democratic society.

6. The only way really of reading this determination is the judge, quite understandably, one has natural sympathy for the Appellant, is simply giving the Appellant another chance. But what is the chance? What is difficult here is there is a system of immigration control and the Appellant cannot meet it. He should have simply stayed in Sri Lanka and entered into correspondence with Sunderland University. They would no doubt have lodged him another CAS. He would have lodged the application with the Respondent who would have granted permission for the next semester

which would have been September, not May. That is simply the normal system of immigration control and the Judge has not set out what is disproportionate about that.

7. I am satisfied the judge has not gone into those arguments. Overall bearing in mind that he has not then reflected back on the purpose of the Immigration Rules, the judge has not set out any analysis as required by **Gulshan** or **Nagre** that I am persuaded that the Respondent's request is justified. There is a material error of law. I therefore invited submissions from both advocates as to the merits given the lack of any factual issues. After receiving those submissions I made the following decision.
8. I am not going to allow the Appellant's appeal against the Secretary of State's decision. The decision is really quite a simple one. The Respondent made an immigration decision back in June 2013, noting that the appellant had not been able to commence his course and therefore stating that his studies as a Tier 4 Student would be terminated and that he should leave the United Kingdom. The Appellant challenged that. As was accepted before the First-tier Judge and has not been reargued before me, he cannot succeed under the Immigration Rules.
9. What has happened here quite simply is that as I said earlier, the agreement between the Appellant and the University of Sunderland was frustrated due to events occurring in Sri Lanka. Therefore you could not start his course as required. The Home Office essentially are only reacting to events that have occurred. I am not persuaded that despite his good history in the United Kingdom and the Appellant is clearly progressing well in his studies, that that in itself creates such a bundle of rights and expectations that this should require the Respondent to grant him a period of leave in order for the appellant to somehow renegotiate your position.
10. I am satisfied that there is nothing to prevent the Appellant lodging a fresh application from outside the United Kingdom. I note that if you do not voluntarily return clearly there could be prejudicial matters that would then be taken into account in relation to your further applications to come back to the United Kingdom.
11. I am satisfied however, and I would record it in this determination, that given the unfortunate accident and the commencement of dates as to your return and notification to UKBA that it was not unreasonable for you to come back to the United Kingdom to challenge the decision. No adverse immigration point should be taken in any future application because of that.
12. But that aside I cannot see that it is against the normal public interest to require you to go back to Sri Lanka and make a further application. There is an interruption to your education. That has already occurred due to the accident in Sri Lanka. It is unfortunate that it has occurred to the length that it has. Arguably you could have succeeded with a fresh application to have started last autumn. That however is well in the past

now. I am determining it as of today's date and of today's date I am satisfied that it is a proportionate decision bearing in mind that you came here as a student. You are progressing well as a student but your status in the UK was always that of a student, that the decision of the Respondent was a reasonable one.

13. I therefore dismiss your appeal.

Summary of decisions;

The 1st Tier Judge having made an error of law on a full review the appeal is dismissed.

No anonymity order.

No costs order is appropriate.

Andrew Wilson

30th June 2014

Deputy Upper Tribunal Judge Wilson