



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/52199/2013

THE IMMIGRATION ACTS

Heard at Field House
On 4th June 2014

Determination Promulgated
On 27th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

MR ALI RAZA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jafar - Counsel

For the Respondent: Ms J Isherwood – Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against the determination of First-tier Tribunal Judge Clarke issued on 27th February 2014 allowing the appeal of the Appellant against the decision of the Secretary of State made on 22nd October 2013 to refuse further leave to remain as a Tier 4 Student. The Appellant is a citizen of Pakistan born 22nd December 1989.

2. The Secretary of State refused the application because the Appellant had not provided a CAS which is a mandatory requirement.
3. On 10th April 2014 First-tier Tribunal Judge Brunnen granted permission to appeal. He said:
 - “2. The grounds on which permission to appeal is sought submits that the Judge erred in failing to apply the principles laid down in **MF, Gulshan** and **Nagre**. There appears to little merit in these submissions since the judge expressly found at paragraph 16 of the Determination that the circumstances of the case were such that they were compelling and that it would be unjustifiably harsh for the Appellant not to be able to complete his studies.
 3. The grounds submit, further, that the Judge failed to give adequate reasons for this finding. This is arguable. Although the Judge expressly referred to the principles stated in **Patel** and **Nasim**, it is arguable that the judge failed to apply them.”
4. To expand slightly on the grounds as stated in the grant of permission it was submitted by the Respondent that the Tribunal had found that the criteria in the points-based system Rules impose a higher test than the proportionality test of Article 8. It is submitted that the Appellant has no right to remain in the UK purely to complete his studies and he is entirely at fault for having failed to complete his final module. There is therefore nothing compelling or exceptional about his circumstances, particularly since he has made no attempt to enquire whether he could complete his last module in Pakistan or via distance learning and cannot continue his studies as he does not have a valid CAS.
5. Judge Clarke relied on the decision **CDS (PBS “available” Article 8) Brazil [2010] UKUT 305** and accepted the submission of Mr Jafar that the principles set out in **CDS** that if a student is faced with hypothetical removal which would have prevented him from completing the course of study for which he had been given leave, then it is justifiable to grant leave so that the course can be completed. This is therefore what she did. She allowed the appeal to the extent that he would be granted the necessary leave to complete his module and sit his examinations. She also said at paragraph 15:
 - “15. There is a gap in why it is his college never offered him a CAS earlier, other than at the time of his application his results were not produced and his leave to remain expired on 31st August 2013 just before the results. It is likely that this resulted in the college not being able to issue a CAS.”
6. At the hearing before me Ms Isherwood pointed out that the Appellant is still missing the required module but I heard evidence from the Appellant who told me that he has paid a fee and is doing his coursework to enable him to sit the exam to complete the module that is missing. He said that he had actually started his degree later than planned because he did a preliminary course prior to starting the degree. The original plan was that his leave would finish at the same time as his course. The

CAS he was expecting was to do a Masters. If his coursework is accepted he will have his degree and then he would hope to remain to do his Masters. The position of Ms Isherwood is that he can go back and do this in Pakistan.

7. Having considered the determination of Judge Clarke I conclude that there is no material error of law in it. She had placed weight on a letter from LCA Business School dated 12th December 2013 confirming that the Appellant was registered on a BA - International Business Management course with an expected completion date of 30th May 2014. The letter said he had one element of that degree course to finish. It also confirms that he could commence classes on 21st January 2014 and finish on 25th March 2015 and then sit the exam in April. In these circumstances and bearing in mind that she granted leave only until the end of the course he is currently doing, it seems to me that she was entitled to reach the conclusion she did and that there is no material error of law in her decision.

DECISION

I find that there is no material error of law in the determination of the First-tier Tribunal and that that decision shall stand.

Signed

Date: 26th June 2014

N A Baird
Deputy Upper Tribunal Judge Baird