IAC-AH-LEM/KRL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/47355/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25th January 2016	**On 31st March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR BIJON RAMOND GOMES
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Shamsuzzoha
For the Respondent: Ms S Sreeramen, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed with permission against the determination of the First-tier Tribunal Judge dismissing his appeal against a refusal to vary his leave to remain in the UK and to remove him under Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The application for permission to appeal maintained that the Immigration Judge in his decision to dismiss the appeal failed to take into account that on 5th June 2015 the Tribunal provided a direction to the appellant to submit his statement along with supporting documentation of 3rd July 2015. The judge made a material error of law by not taking into account material facts available before him.

3. The appellant's claim was that he was just four modules away from completing his course and when his college licence was revoked, although he was given 60 days to find another institution, despite his best efforts he was unable to obtain another college to assign him a further CAS which is a requirement in order to study as a student. As a result the appellant's application was considered under Paragraph 276ADE and rejected.

4. At paragraph 8 and 11 of the decision the judge drew adverse conclusions because the appellant did not file a witness statement or other documents despite the fact that the appellant had submitted his academic documents to the Tribunal and also to the Secretary of State on 29th June 2015 by next day delivery.

5. At the hearing before me, Ms Sreeramen submitted that the appellant had leave to remain as a Tier 4 Student and his leave had been curtailed to expire on 25th August 2014 having been offered 60 days to locate an alternative college after his college was removed from the sponsors' register. She submitted that he made his application 22nd August 2014, outside the Rules but within time prior to his leave expiring.

6. I find that it does appear that documentation was sent to the Tribunal and received and stamped at Hatton Cross on 30th June 2015. The judge's decision was determined and promulgated on the papers on 10th July 2015 but did not refer to the further bundle from the appellant.

7. At the hearing before me Mr Shamsuzzoha attempted to submit that the Secretary of State had considered the matter under paragraph 276ADE when this did not apply and there were no significant obstacles to the appellant returning under paragraph 276ADE(6) and that the appellant had not applied for settlement, he merely wished more time to complete his course. He needed another six months having completed eight out of twelve modules. Mr Shamsuzzoha submitted that the judge should have considered the matter outside the Rules under Article 8 and he referred me to **CDS Brazil [2010] UKUT 00305.** This is authority for the principle that a person who is admitted to follow a course that has not yet ended may build up a private life that deserves respect and the public interest in removal before the end of the course may be reduced where there are ample financial resources available.

8. I am not persuaded that this is the case in this instance and agree with Ms Sreeramen that the grounds are premised on procedural irregularity, not the failure of the Secretary of State in considering Paragraph 276 of the Immigration Rules.

9. In this instance the failure to consider the documentation has had no material effect on the decision. On consideration of the contents of the bundle they add nothing further to that which the judge had already considered and as the judge states at paragraph 11, Article 8 was not engaged in the appeal. The appellant had made an application outside the Immigration Rules, the Secretary of State had given the appellant a further 60 days to find a college which he had not done.

10. At the hearing before me it was the appellant's contention that paragraph 276ADE *did not apply* and this is the Immigration Rule which does address the issue of private life. As pointed out **CDS** is not a general dispensing power and although one may sympathise with the appellant's predicament, the Secretary of State in this instance did consider his private life under the application of paragraph 276ADE and had she followed the course that Mr Shamsuzzoha advocated, the application would have merely been dismissed as an application outside the Immigration Rules.

11. There was nothing in the bundle of papers not referred to by the First-tier Tribunal Judge and nothing which was presented to me by way of evidence to show that a protected Article 8 right had been engaged. The appellant had already been granted a 60 day extension and there was nothing in the appellant's bundle as to what had prevented the appellant finding a further college.

12. Even if the evidence which was supplied had been taken into account this cannot counter the Supreme Court authority of **Patel [2013] UKSC 72** to the effect that the right to complete an educational course is not a protected right under Article 8 without more. There needs to be some family or other right to enshrine and protect the appellant's rights. There was none presented in this case. I therefore find there is no material error of law and the decision of the First-tier Tribunal Judge shall stand.

Signed Date 10th March 2016

Deputy Upper Tribunal Judge Rimington