



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

Appeal Number: IA/27509/2015

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
On 25<sup>th</sup> August 2017**

**Decision & Reasons Promulgated  
On 19<sup>th</sup> September 2017**

**Before**

**UPPER TRIBUNAL JUDGE KING TD**

**Between**

**MR MD MUMINUL ISLAM**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Mr S Kotas, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Bangladesh who appealed against the decision of the Secretary of State dated 17<sup>th</sup> July 2015, refusing to grant leave to remain as a Tier 4 (General) Student Migrant. The appeal came before First-tier Tribunal Judge Blake on 26<sup>th</sup> October 2016. By a decision dated 2<sup>nd</sup> December 2016 that appeal was dismissed.

2. The appellant seeks to challenge that decision on the basis that the Judge failed to deal with the issue of human rights, which was part of the appeal which he had lodged against the decision. Permission to raise that matter before the Upper Tribunal was granted on 19<sup>th</sup> June 2017 and thus the matter comes before me to determine the issue.
3. The appellant does not attend the hearing and no explanation has been offered as to why not. He did not attend the hearing before the First-tier Tribunal, and I note that the date and place of the hearing before the Upper Tribunal was notified to him on 4<sup>th</sup> July 2017 by first class post to his stated address. He has had ample notification of these proceedings and accordingly I deem it to be in the interests of justice to proceed to determine the matter in his absence.
4. In summary, the appellant came to the United Kingdom in 2010 as a student and had leave until 2012. Various further applications were submitted but would seem not to have dealt with properly by the respondent. That was acknowledged in the course of the hearing but eventually there were two decisions, the first on 11<sup>th</sup> February 2015 noting that because the licence of Birmingham College of Law and Management Limited had been refused a period of 60 days would be granted to the appellant to obtain a further CAS in order to further the application that had been made. By a decision of 17<sup>th</sup> July 2015 permission to remain was refused not least because no further CAS had been provided. Thus without a valid CAS the requisite points could not be awarded.
5. A relevant document, which was before the Tribunal Judge, was a letter from the appellant's solicitors dated 24<sup>th</sup> October 2016, which enclosed also a witness statement of the appellant dated 19<sup>th</sup> October 2016. The letter made it clear that the appellant would not be attending the hearing and asked for the appeal to be determined on the papers, notwithstanding that originally an oral hearing had been requested.
6. The witness statement disagrees with the Secretary of State's decision. The statement noted that the appellant had received the letter from the Home Office dated 11<sup>th</sup> February 2015, indicating that he was required to submit a new CAS letter if he wanted to extend leave to remain. He said that he was not prepared as it involved huge preparation and financial commitment. He contacted a few colleges but without success. Complaint was made as to the length of time that it had taken to sort matters out.
7. The statement concluded at paragraph 8 as follows:-

"I came to the UK with a hope/expectation to get a qualification from the UK. My parents and family has invested most of their life savings for my well being. My parents believe that if I returned to Bangladesh with a UK approved qualification then I will be able to fulfil their desire".

8. The Judge noted the errors on behalf of the Secretary of State between 2012 and 2015 but found that the decisions of February 2015 and July 2015 were lawful and fair.
9. The appeal, therefore, against the Immigration Rules was dismissed. There has been no grounds of appeal against those matters seeking to identify any error in approach.
10. What is contended, however, is that the Judge was in error in not considering the appellant's human rights. It seems to me that that it is a challenge that is fundamentally misconceived, as it clear from paragraphs 47 and 48 of the determination that the Judge expressly looks at private and family life. The Judge says "I do not find there was any evidence before me in respect of the appellant's private or family life in the UK such as to warrant consideration of his application outside of the Rules". The Judge goes on to say "I found that even if I had considered the application outside the Rules, I did not find that there were any facts before me to show that there were any exceptional circumstances that would warrant the grant of leave in the UK outside of the Rules".
11. It is entirely clear therefore that the Judge has regard to the current jurisdiction to determine whether there are any matters of a compelling or exceptional nature outside the Rules that would render removal disproportionate or inappropriate. There is simply nothing that was placed before the Immigration Judge, other than the statement containing the passage to which I have made reference. There is no detail as to the appellant's private life other than his expressed hopes for qualification. It has been well settled that simply a desire to remain to further education is not a ground upon which to found a successful application under Article 8. The matter was considered indeed by the Supreme Court in **Patel and Others [2013] UKSC 72**, indeed at paragraph 57 it was specifically stated that 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.
12. Whilst I find it entirely clear that the Judge had paid regard to the proper considerations in relation to human rights, there simply was not and is not any material upon which a conclusion could safely be made that removal did engage Article 8.
13. I find therefore that the determination was proper and contained proper regard to all relevant matters including human rights. In those circumstances the appeal of the appellant before the Upper Tribunal is dismissed.

### **Notice of Decision**

Appeal before Upper Tribunal dismissed. Original decision of the First-tier Tribunal is to stand, namely that the appeal is dismissed both in terms of the Immigration Rules and Article 8 of the ECHR.

No anonymity direction is made.

A handwritten signature in black ink, appearing to read "P. Q. King". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

Signed

Date 18 September 2017

Upper Tribunal Judge King TD