



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

Appeal Number: IA/25331/2012  
IA/25334/2012  
IA/25333/2012

**THE IMMIGRATION ACTS**

**Heard at George House, Edinburgh  
On 12 June, 2013**

**Determination  
Promulgated  
On 27 June 2013**

**Before**

**THE PRESIDENT, THE HONOURABLE MR JUSTICE BLAKE**

**Between**

**MOHAMMED HAMZAH ALNAKHLI  
AND DEPENDANTS**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellant: Mr K. McGuire, instructed by Drummond Miller (Solicitors)  
For the Respondent: Mr A. Mullen, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. Mr Alnakhli is a citizen of Saudi Arabia who entered the United Kingdom in October 2008 with leave as a student. The other appellants are his dependants and their position is entirely reliant upon the outcome of his appeal. I will refer to Mr Alnakhli as the appellant.
2. The appellant applied in 2009 for leave to remain as a Tier 4 general student migrant but that application was refused in July 2010 such refusal being in accordance with the Rules having regard to an unauthorised change of course and other relevant matters that were then considered. He appealed the decision on the basis that, at the time of the refusal, he had been accepted at the Edinburgh Napier University on a course that was due to be begin on 6 September 2010 and would lead to a qualification of a MSc in Transportation Planning and Engineering. This was the qualification he needed to complete his course of study in the United Kingdom.
3. His appeal was heard by Judge Reid on the 3 November 2010, who allowed it on Article 8 grounds on 21 December 2010. The basis for her decision was that it would be a disproportionate interference with the private life of a person admitted as a genuine student not to afford him the opportunity to complete the course of study for which he had originally been accepted for admission. In her decision the Judge gave no details of when the course of study upon which the appellant was then embarked would conclude, or what period of leave she considered appropriate to give effect to her decision. She left the last matter to the Secretary of State.
4. The position established during the during before me was that following Judge Reid's decision, on 28 March 2011 the Secretary of State enquired of the appellant's solicitors when the course upon which he was enrolled at the Napier University was due to end. The response was given on 2 May 2011 and enclosed a letter from the Student Affairs Officer at the University stating that the details were correct as of 6 April 2011. The start date of the course was given as 10 January 2011 and the expected end date was given as 12 May 2012. It was thus not surprising that shortly thereafter the appellant was given leave to remain until 26 May 2012, on a discretionary basis with the observation that no other extension of stay would be granted.
5. In due course, the appellant applied for an extension of stay that was refused and the appeal against this refusal then came before Judge Morrison on 7 February 2013. At that hearing, a letter from the Edinburgh Napier University was produced dated May 2012 indicating that the end date for the appellant's course was 21 September 2012. The earlier letter noted at [4] above was not before the judge. The start date for the course was still given as January 2011.
6. The judge concluded that on the basis that that documentation the Secretary of State had not given effect to Judge Reid's decision because a reasonable opportunity to enable the appellant to have completed the

course would have required the Secretary of State to give him leave to the 21 September 2012 rather than the end of May 2012. The difference between the two letters from the University was not explored at the hearing.

7. It was further apparent that the appellant had still not completed his course either in September 2012 or by the date of the hearing.
8. The judge took the view that Judge Reid had intended the appellant be granted leave to the 21 September 2012. There was nothing to indicate that she intended that the appellant be given such further leave as would enable him to complete the course whenever that may be. He rejected the submission made by the advocate on behalf of the appellant that what Judge Reid had intended was that the appellant be given leave and any further extensions of stay necessary to enable the appellant to complete those parts of the course that were outstanding. In fact, if the matter had been fully investigated, it would have been seen that Judge Reid's decision was sufficiently given effect to by the grant of permission by the Secretary of State until May 2012.
9. The application of Article 8 to extensions of stay by genuine students is a somewhat fragile jurisprudence, but in my judgment, can only require, at the highest, no more than the grant of a reasonable opportunity to complete a course for which an appellant had been accepted and was able to fund and which had reasonable expectations of completing in time. It cannot extend to an indefinite sequence of extensions of stay that subsequently proved necessary to enable the appellant to actually complete the course if he fails to complete it in such period as is reasonable in all the circumstances.
10. The appellant's history of change of course before the decision of Judge Reid, meant that he had fallen outside the strict terms of the points based rules before then. Thereafter he was reliant on human rights grounds. It was consistent with those grounds that he be given one final opportunity to complete his current course. The Secretary of State was acting lawfully in given him leave for one final period commensurate with what was mutually understood to have been the date for completing the course and that effectively gave effect to Judge Reid's decision.
11. Judge Morrison refused the appeal in February 2013 because he understood the grounds of the appeal were entirely connected an entitlement under the points based system of the Immigration Rules. He stated:

"given that all the appellant is asking for is a further short period of leave until May 2013 I might have been inclined to allow the appeal based on Article 8 if that had been argued".
12. If the judge had reminded himself what the grounds of appeal were before him he would have seen that Article 8 was relied on. Indeed it

would appear that is all the appellant could have relied upon as ever since the decision of Judge Reid he had fallen outside the terms of the rules.

13. Accordingly I accept the appellant's submission that there are material errors of law in Judge Morrison's decision. He failed to understand that Article 8 was a matter for him. I accordingly set aside his decision and remake it.
14. The present position is that I was told that the appellant has now succeeded in obtaining his MSc and that his graduation is to take place on the 26 June and he has booked his return ticket to Saudi Arabia to travel there with his family on the following day. He presently has leave pending the determination of this appeal pursuant to Section 3C of the Immigration Act 1971 as amended. Upon the determination of this appeal his leave will expire.
15. In my judgment the appellant was only entitled to a reasonable opportunity to complete his course of studies and that opportunity had been afforded to him by the Secretary of State. It is unclear on the evidence why the period of study was extended from May to September 2012. It may be, as was alleged before me, that this was because he was unable to start his study until the College had received confirmation of the grant of leave to remain in May 2011. If that had been the explanation then that could have been placed before the Secretary of State promptly by those instructed by the appellant indicating that their previous answer needed to be amended in the light of that fact.
16. In those circumstances it might well have been fair to have granted the period until September 2012, which was the earliest reasonable opportunity to have completed the course. On the other hand, it may be that the course was extended because the appellant was having difficulties in completing the course. This appears to explain the further delay in the period from September 2012 to May 2013. If that had been the explanation there was no obligation on the Secretary of State to permit him a further opportunity to complete the course.
17. As the burden of proving the relevant facts is on the appellant and the position was evidentially unclear before me, in my judgment the Secretary of State was not bound to grant any further period of stay. The decision refusing an extension was accordingly lawful and compatible with the appellant's human rights.
18. I remake the appeal by dismissing it.

Signed

Date 26 June 2013

## Chamber President of the Upper Tribunal