



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/21961/2012

THE IMMIGRATION ACTS

Heard at Glasgow
On 25 February 2014

Determination Promulgated
On 31 March 2014

Before

UPPER TRIBUNAL JUDGE DEANS

Between

MR CHIBUISI IKWUAGWU

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Maleque, Bruce Short Solicitors
For the Respondent: Mr M Matthews, Home Office Presenting Officer

DETERMINATION AND REASONS

- 1) Judge of the First-tier Tribunal Wood TD dismissed this appeal against refusal to vary leave as a Tier 1 (Post-Study Work) Migrant. At issue before the First-tier Tribunal was whether the appellant was entitled to 15 points under Appendix A because his eligible award or qualification had not been obtained prior to the date of his application for leave. He made his application on 30 March 2012 but his qualification was not awarded until later. The judge found that the award was not made until the Board of Examiners met on 8 May 2012 and the appellant was therefore not entitled to the 15 points claimed.

- 2) In addition, the appeal was dismissed under Article 8 and the judge found that the appellant had no legitimate expectation that he would automatically be allowed to avail himself of the post-study work provisions in place when he came to the UK in December 2010.
- 3) Permission to appeal was granted by the Upper Tribunal and, in a determination dated 15 April 2013, Upper Tribunal Judge Macleman allowed the appeal having regard to the decision of the Upper Tribunal in Khatel [2013] UKUT 00044. The Secretary of State then sought permission to appeal to the Court of Session.
- 4) The decision in Khatel was reversed by the Court of Appeal in Raju [2013] EWCA Civ 754. Accordingly in terms of Rule 45(1)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008 the Upper Tribunal notified the parties that the determination by Upper Tribunal Judge Macleman would be reviewed and set aside unless any reasons to the contrary were received within 10 days after the date of the notice issued on 5 July 2013. No objections were received.
- 5) In the light of the decision in Raju, the decision by Judge of the First-tier Tribunal Wood TD in respect of the appeal against the refusal to vary leave has been shown to be correct in law and the subsequent decision by Upper Tribunal Judge Macleman is set aside.
- 6) At the hearing my attention was drawn to a written submission dated 19 February 2014 made on behalf of the appellant. This states that the appellant came to the UK in December 2010 with entry clearance/leave until 16 May 2012 as a Tier 4 (General) Student Migrant. He came to study for a Masters degree in International Oil and Gas Management from January 2011 until January 2012. He intended to apply for a Tier 1 (Post-Study Work) visa on completion of his Masters so as to obtain some practical work experience in his chosen field.
- 7) On 30 March 2012 he applied for leave to remain as a Tier 1 (Post-Study Work) Migrant. The Tier 1 route was due to close in April 2012 and no application could be made after that date. The application was refused by the respondent on 29 September 2012. The appellant's degree qualification was not officially awarded to him until May 2012. The appellant was contacted by the respondent on 15 August 2012 to request evidence that his degree had been awarded and the appellant posted the original copies of his award letter and certificate to the respondent. These documents were received by the respondent but the appellant was not awarded 15 points under Appendix A because his degree had not been obtained prior to the date of the application. This left the appellant 15 points short of the 75 points required under Appendix A.
- 8) The appellant recognised, having regard to the cases of Raju and Nasim [2013] UKUT 00610, that his appeal would not succeed under the Immigration Rules as, according to Nasim, the date of the eligible qualification was the date on which the University or other institution actually conferred the award.

- 9) The appellant makes a personal statement as to his circumstances. He points out that prior to the cut off date for Tier 1 applications on 6 April 2012, he had satisfactorily completed all academic requirements and was eligible for an award of a degree with Distinction. His degree certificate would, however, be formally awarded only once formalities were completed by the university. Apart from not having the formal certificate of award of his degree he met all the other requirements of the visa scheme. He had worked in the energy sector overseas, saved money and come to the UK to the best institution to study management of energy industries. He had completed all his requirements as above and did everything in good faith, aspiring to obtain professional experience in an energy multinational with offices in the UK in reliance upon a post-study work visa. He maintains that he has an exemplary academic record and all that he sought was an opportunity to contribute to the industry, to obtain experience, and to make a living and further his career. He initially obtained positive dispositions from employers but was later rejected owing to his immigration status.
- 10) I am satisfied that the appellant is both an able and a genuine student. Had the Tier 1 (Post-Study Work) Migrant scheme not closed in April 2012 it appears the appellant would have met the relevant requirements. Nevertheless, the Immigration Rules are subject to change and as the Judge of the First-tier Tribunal the appellant is not entitled to benefit from any assumption or expectation that the Immigration Rules will not be changed to his detriment after he has entered the UK.
- 11) The Judge of the First-tier Tribunal considered the appeal both in relation to proportionality and fairness. It is the view of the appellant, as expressed in his statement, that other applicants who did not have their awards at the time of making an application have nevertheless obtained leave. I have no knowledge of this, although I am aware that many appeals made on the basis of the decision in Khatel have ultimately been unsuccessful in consequence of the reversal of the decision in Khatel by the Court of Appeal in Raju. Furthermore, as was pointed out by Lord Carnwath in Patel [2013] UKSC 72, Article 8 is not a general dispensing power. Article 8 is concerned with private or family life and not education as such. 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. These words seem relevant not only to educational courses themselves but also work experience following a course of study. There is no very compelling reason why the appellant should succeed under Article 8 when he does not succeed under the Immigration Rules.
- 12) The respondent's decision of 25 September 2012 contained a removal decision purporting to have been made under section 47 of the Immigration, Asylum and Nationality Act 2006. This decision is not in accordance with the law, in terms of Adamally & Jaferi [2012] UKUT 414.

Conclusions

- 13) The decision of the Upper Tribunal of 15 April 2013 is set aside. The making of the decision of First-tier Tribunal did not involve the making of an error on a point of law in relation to the appeal against the refusal to vary leave. The appeal against the refusal to vary leave is dismissed.
- 14) The removal decision under section 47 is not in accordance with the law and the appeal is allowed to this limited extent only.

Anonymity

The First-tier Tribunal did not make an order for anonymity and I am not aware of any reason why such an order would now be made.

Fee Award Note: this is not part of the determination

The Judge of the First-tier Tribunal did not make a fee award as the appeal was dismissed. Notwithstanding that the appeal has been allowed in respect of the section 47 decision, on the substantive issue of the refusal to vary leave the dismissal has been upheld and I therefore make no fee award.

Signed

Date

Upper Tribunal Judge Deans