**Upper Tribunal**
**Immigration and Asylum Chamber** **Appeal Number: IA/43461/2013**

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Promulgated** |
|---|---|
| **On 10 December 2014** | **On 12 December 2014** |

**Before**

**Upper Tribunal Judge Kekić**

**Between**

**S M Tazbir**

**Appellant**

**and**

**Secretary of State for the Home Department**

**Respondent**

**Representation**

| | |
|---|---|
| For the Appellant: | No appearance |
| For the Respondent: | Mr I Jarvis, Senior Home Office Presenting Officer |

## Determination and Reasons

### Details of appellant and basis of claim

1. This appeal comes before me following the grant of permission on 20 October 2014 by Upper Tribunal Judge Reeds in respect of the determination of First-tier Tribunal Judge Walters who dismissed

the appeal following a hearing at Hatton Cross on 9 July 2014. The determination was promulgated on 30 July 2014.

2. The appellant is a Bangladeshi national born on 5 December 1986. He entered the UK as a Tier 4 student on 8 March 2011. His leave was curtailed on 14 May 2013 to expire on 13 July 2013 and on 3 October 2013 a decision was made to refuse to vary his leave and to remove him.

3. The appellant failed to attend the hearing before the First-tier Tribunal. It was maintained by his representative that he was suffering from back ache; a medical note was adduced to confirm this and certifying him "unfit for work". Additionally, the appellant had been admitted to hospital that morning with "chest pains"; no documentary evidence in support of that was available and the appellant's wife (not a co-appellant) was not in attendance either. The judge was not satisfied with the evidence and refused to adjourn the hearing. The representative then withdrew and the judge proceeded in his absence. He considered the Article 8 claim put forward but found that the requirements of paragraph 276ADE had not been met. He considered whether there were any other circumstances which warranted a grant of leave outside the rules but found none. Finally, he noted the references in the appellant's application form to problems over a property dispute in Bangladesh but concluded that as the appellant had failed to make an asylum application to the respondent, there was no asylum issue for the Tribunal to determine.

4. The appellant sought and was granted permission to appeal on the basis that arguably the judge should have dealt with all matters raised by the appellant in support of his appeal.

## Appeal hearing

5. The appeal came before me on 10 December 2014. There was no appearance on or by the appellant and no messages had been received. In the absence of any communication from the appellant or his representatives, I proceeded to hear the appeal in the appellant's absence. As of the time of preparation of this determination the following day there has still been no communication from the appellant or his representatives.

6. Mr Jarvis made submissions. He accepted that following on from the Tribunal's detention in Haque (s 86(2) – adjournment not required) Bangladesh [2011] UKUT 00481 (IAC), the judge had been obliged to determine a ground of appeal brought under section 84(1)(g) of the Nationality, Immigration and Asylum Act 2002. The judge's failure to do so amounted to a material error of law. Mr Jarvis asked that the decision be re-made and the appeal

dismissed. He submitted that the appellant had failed to attend his hearing. He had not particularised his claim nor had he taken the opportunity to put his claim to the Secretary of State. At its highest the claim was not covered by the Refugee Convention and a risk of a breach of Articles 2 or 3 had not been made out. This was a property dispute and no real risk of harm had been established.

7. At the conclusion of the hearing I reserved my determination which I now give.

**Findings and Reasons**

8. I deal first with the criticisms of the judge's determination. It is alleged that the appellant was deprived of a fair hearing because the judge refused to adjourn the appeal. There is no merit in that complaint. The judge was entitled to be sceptical of the appellant's claim to be so unwell with back ache that he could not attend the hearing. He noted that the medical certificate did not state he was unable to attend a hearing and there is no suggestion of any history of back trouble. Moreover, the appellant's claimed problems arose just around the date of the hearing; assuming they were genuine, he would have been expecting to attend and pursue his appeal but no bundle of documents in support of the claim were submitted. Despite the directions issued, no witness statement had been submitted and no details of the claim were adduced. The appellant could have arranged for evidence from the hospital to have been forwarded to the Tribunal or indeed for his wife to attend on his behalf to give details about his condition. To date, there has been no confirmation of his claimed admission to hospital. The judge considered the adjournment application and was entitled to refuse to grant it. His decision discloses no error of law.

9. The same cannot be said however of the judge's failure to deal with the appellant's claim that he would be at risk on return to Bangladesh. The appellant raised the matter in his application for leave and in his grounds of appeal, albeit briefly. As conceded by Mr Jarvis, and confirmed by Haque, the judge had a duty to consider the matter and his failure to do so was an error of law.

10. I therefore set aside the determination in its entirety. In view of this conclusion, my view on the matter of the adjournment is essentially academic. I now proceed to re-make the determination.

11. I note that the appellant and his representatives were properly served with the notice of hearing on 3 November 2014. The notice warns the parties that the appeal may be determined in the absence of a party who does not attend. The appellant did not

attend and neither did his representatives. No message or correspondence has been received from either to explain the non attendance. No further documentary evidence has been submitted in support of the appeal. In all the circumstances I am satisfied that it is appropriate to proceed in the appellant's absence.

12. There are three parts to the appellant's claim. The first is his application for leave to remain as a student. As he has not studied for at least the last year and a half, and there is no evidence that he is enrolled on a course, he has no claim to be here as a Tier 4 Migrant.

13. The appellant also relies on Article 8. He claims to have a private life here on account of his friendships, studies and work but no details of any of these have been adduced. He claims to have a wife and to have family life with her but there is no information about his marriage and no details of his wife's status in the UK. No other reasons are put forward. Given the vagueness of the appellant's claim and the absence of any supporting evidence, I am unable to find that the claim of private and/or family life is made out. The evidence does not satisfy the requirements of paragraph 276ADE. No factors have been put forward to warrant a consideration of leave outside the rules

14. I now turn to the last limb. The appellant maintains in the limited evidence before me that he has problems in Bangladesh over some property. It seems that his "enemies" want to occupy it and have made threats. Not much more is known and indeed the appellant has not taken the opportunity to expand on his account. The appellant came here as a student for a temporary period. He would have known that he would be expected to return on completion of his studies. Even so, no steps were taken to claim asylum. Instead the appellant abandoned his studies and has failed to put a full account of his case forward. He first mentioned his alleged problems to the respondent only after his leave was curtailed and even then as part of an Article 8 application. The timing and circumstances of his application suggest this was a last ditch attempt to prolong his stay and his reluctance to put forward any evidence to support his claim undermines its credibility.

15. Even if the account were true, the appellant does not appear to have taken any steps to engage legal assistance to pursue his property dispute. Plainly such assistance is available in Bangladesh. The appellant also has the option of seeking the assistance of the authorities or of relocating until the dispute is resolved. the claim does not engage the Refugee Convention and the appellant has failed to show that there would be a real risk of a breach of his Article 2 or 3 rights if he was returned to Bangladesh. It seems to me that the appellant is intent on remaining in the UK by any means possible and he has made full use of the appeals

process to prolong his stay despite his entirely unmeritorious claims.

## Decision

16. The First-tier Tribunal made errors of law and the determination is set aside. I remake the decision and dismiss the appeal on all grounds.

## Anonymity

17. The First-tier Tribunal did not make an anonymity order and no request for one was made to me.

**Signed:**

**Upper Tribunal Judge Kekić**

11 December 2014