



IAC-FH-AR-V1

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

Appeal Number: IA/49516/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 29 February 2016**

**Decision & Reasons Promulgated
On 1 April 2016**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MOHAMMED ASIF BATLIWALA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr D Clarke, Home Office Presenting Officer
For the Respondent: Mr R Claire, Bernard Chill Axtell Solicitors

DECISION AND REASONS

1. This is the Secretary of State's appeal. I shall refer to the respondent as the appellant as he was before the First-tier Tribunal. He is a citizen of India and his date of birth is 5 July 1992.

2. The appellant made an application to vary his leave as a Tier 4 (General) Student. The application was made on 26 September 2014 and the Secretary of State refused the application in a decision of 12 November 2014 because the appellant the bank statements that he submitted did not establish that he had funds to cover the required consecutive 28 day period. The appellant appealed the decision of the Secretary of State and his appeal was allowed by Judge of the First-tier Tribunal Watt following a hearing on 24 July 2015. The Secretary of State was granted permission by Judge of the First-tier Tribunal Frankish on 26 November 2015.
3. The appellant accepted that he did not have the necessary funds in his account for the required period. The judge considered his evidence that he was granted a student visa in September 2011 which was for a period of three years and that he commenced studying a BA in Honours Business and Human Resources Management at the University of Portsmouth in September 2011. The judge accepted that the appellant had paid £7,500 to complete the first year of his studies and that he had completed that year successfully. She accepted that he had paid a further sum of £10,500 for the second year but had failed four modules which led to him having to repeat the second year of his studies in 2013 and 2014, and having to pay a further sum of £4,500.
4. The appellant did not pass all four resits but he was invited by the university to complete these and he had to pay an additional sum. The judge accepted that the appellant had in fact paid £26,167 in tuition fees to the University of Portsmouth and the judge accepted that the appellant had qualified to continue his studies and that he had paid towards his tuition fees for the academic year 2014 and 2015.
5. It was accepted by the appellant that he did not submit evidence as asserted by the decision maker but this was an honest and genuine mistake resulting from personal difficulties which culminated in him experiencing problems concentrating. He accepted that the maintenance funds should have been placed into his bank account but he asked the Tribunal to exercise discretion on the basis of his personal circumstances. He had to date spent a considerable amount of money on his education here and he had in fact passed his exams for the first and second year of studies.
6. The judge accepted the appellant's evidence having found him to be credible and reliable. and concluded at paragraph 13 that discretion under the Immigration Rules should have been exercised in his case, bearing in mind that the appellant has now completed all his required exams for both the first and second years and will be entering the third year of his studies in September 2015.
7. The judge went on to allow the appeal "but only to the extent that there would be a reconsideration by the respondent of the appellant's application". The judge concluded as follows; "the appeal is allowed under the Immigration Rules to the extent that there should be reconsideration by the respondent of the appellant's application".

8. Mr Claire who represented the appellant before the First-tier Tribunal represented the appellant at the hearing before me and confirmed that the appellant's case was presented on the basis that the appeal should be allowed on compassionate grounds.

Error of Law

9. The judge in my view materially erred. The judge said that he was allowing the appeal under the Rules but it is quite clear that if the appellant cannot meet the requirements of the Rules his case was not presented on the basis that he could. Paragraph 245AA was not argued by the appellant and in any event, it does not apply to the circumstances of his case. His case was not advanced on the basis that the decision was not in accordance with the law and in any event the decision was clearly lawful. If indeed what the judge intended to do was to allow the appeal under Article 8 however this was not argued before the First-tier Tribunal. No proper assessment was made under Article 8 in any event. There was no evidence before the judge that the appellant has a family life here and he has been here for a relatively short period of time, albeit that he is a genuine student.
10. The decision of the Secretary of State is in accordance with the Immigration Rules and it was not established on the evidence before the First-tier Tribunal that the decision is not in accordance with the Immigration Rules or that it breaches the appellant's rights under Article 8. The judge does not have jurisdiction to allow the appeal on compassionate grounds outside of the Rules.

Notice of Decision

11. The judge materially erred. This appeal cannot on any basis succeed. I set aside the decision of Judge Watt and dismiss the appeal under the Immigration Rules and Article 8. I conclude that the decision of the Secretary of State is in accordance with the law.
12. No anonymity direction is made.

Signed *Joanna McWilliam*

Date 16 March 2016

Upper Tribunal Judge McWilliam