



IAC-AH-LEM-V1

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

Appeal Number: IA/50218/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 25th November 2015**

**Decision & Reasons Promulgated
On 14th January 2016**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SYED SHTAR ABBAS
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr McVeety, Home Office Presenting Officer

For the Respondent: Mr Afzal

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge of the First-tier Tribunal Ince made following a hearing at Bradford on 13th April 2015.

Background

2. The claimant is a citizen of Pakistan who entered the UK as a Tier 4 (General) Student on 3rd April 2012. He successfully applied for the visa to be extended until 27th September 2014.

3. He applied for a further extension of his visa on line but was unable to take the IELTS test because he did not have his passport. He wrote to the Secretary of State asking for a certified copy so that his national ID card could be renewed by the Pakistani High Commission but there was no response to his letters. Without the certified copy of the passport he was unable to take the IELTS test and his application was refused.
4. It was conceded at the hearing that in these circumstances the claimant could not succeed under the Immigration Rules since he still had no CAS letter and the college's licence had, in the interim, been revoked. Article 8 was the only arguable matter before him.
5. The judge concluded that the Secretary of State had acted unfairly by not responding to the claimant's requests for his passport over a four-week period. He decided to remit the appeal to the Secretary of State for her to consider the claimant's position under Article 8 which he said would have the advantage of allowing her to reflect upon his finding that she had acted unfairly. Furthermore it would allow the claimant to supply additional evidence and make further submissions about his private and family life and his relationship with his Polish girlfriend.

The Grounds of Appeal

6. The Secretary of State sought permission to appeal on the grounds that the application considered by the Secretary of State was one to vary leave as a student. No application was made concerning human rights. The decision included a One-Stop Warning inviting a Statement of Additional Grounds but the claimant had not provided one. The decision was therefore not unlawful. So far as the relationship with the Polish woman was concerned there was no indication that this formed part of the application for variation of leave.
7. Permission to appeal was granted by Designated Judge of the First-tier Tribunal Woodcraft on 21st August 2015 for the reasons stated in the grounds.
8. Following the grant a Rule 24 reply was filed. The claimant stated that he had been found to be a credible witness and it would have been prudent to make a fresh decision instead of challenging it entailing delay and expense.

Submissions

9. I did not need to call upon Mr McVeety.
10. Mr Afzal submitted that all Tribunals had a duty to ensure that their obligations under the ECHR were complied with. He denied that Article 8 had not been pleaded since they were referred to in the grounds of appeal.

Findings and Conclusions

11. The decision before the Secretary of State was whether the claimant could succeed in his application to vary his leave as a student. It is accepted by his representatives that he could not. In his grounds of appeal challenging the decision he relied on the delay in sending a certified copy of the passport. He also stated that if he is removed without completing his education his studies would go astray. He then concluded
“It appears that when the case worker did not find CAS letter with the application he did not bother to ask the appellant the reason for not sending the CAS letter but preferred to refuse his application straightaway which is not fair and is a breach of his basic human rights guaranteed under the ECHR especially Article 8.”
12. That is not a formulation of a claim to be allowed to remain in the UK on private or family life grounds. The claimant was specifically invited in the Section 120 notice to state any additional grounds for his wishing to remain in the UK and he did not do so.
13. There is nothing unlawful in the Secretary of State failing to consider a claim which was never made.
14. In any event, even if she had done so, the claim is absolutely hopeless. The claimant has been in the UK for a relatively short period of time and came for a temporary purpose. He did not put before the Secretary of State any information which could lead her to conclude that he enjoyed family life here.
15. It was not open to the judge to remedy what he considered had been unfair behaviour by the Secretary of State by remitting the appeal back to her. There was no basis for finding that the original decision was unlawful and therefore no basis for remitting the decision to be remade.

Notice of Decision

The original judge erred in law. His decision is set aside. The decision is remade as follows. The claimant’s appeal is dismissed.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Taylor