



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

Appeal Number: IA/33707/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 15th September 2017**

**Decision & Reasons
Promulgated
On 2nd November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

**MISS JANNATUL FERDOUSE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr P Duffy (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant's appeal against decisions to refuse to vary her leave and to remove her, following an application made as long ago as October 2015, was dismissed by First-tier Tribunal Judge Metzger ("the judge") in a decision promulgated on 15th December 2016. The judge found that the

Secretary of State's adverse finding under paragraph 322(3) of the Immigration Rules ("the rules") was made out in the light of evidence from HM Revenue and Customs. This evidence showed that the appellant had breached the conditions of her stay, which prohibited her from working. The judge dismissed the appeal.

2. In the grounds, it was contended that the judge erred as the application of paragraph 322(3) of the rules is discretionary. As the appellant had an innocent explanation and her mistake in breaching her conditions was unintentional, discretion should have been exercised in her favour. It was also contended that the judge failed to consider the appellant's Article 8 case. She was unable to continue her studies following refusal of her application for Tier 4 student leave. Denying her further leave to remain before completing her course would breach her rights in the private life context. The grounds include mention of CDS (Brazil) [2010] UKUT 305, said still to be good law and distinguishable from the Supreme Court judgment in Patel and Others [2013] UKSC 72 and the decision of the Upper Tribunal in Nasim and Others [2014] UKUT 00025.
3. In a rule 24 response from the Secretary of State dated 10th August 2017, the appeal was opposed on the basis that the judge directed himself appropriately. The appellant had breached her conditions of leave by working unlawfully. Any failure regarding Article 8 was not material as there were no prospects of success.

The Hearing

4. There was no appearance by or on behalf of the appellant. The Tribunal's case management file showed that notice of the hearing was sent to the address provided by her, and to her solicitors. The file contained a message from the solicitors asking that the hearing be conducted "on the papers".
5. Mr Duffy said that there was no full explanation for the appellant's absence. In any event, even if the judge did err in relation to Article 8 of the Human Rights Convention, this was not material. The appellant had made no family life case and her private life ties as a person who had leave as a student afforded no prospect of success. There was no material error of law in the decision.

Findings and Conclusions

6. The judge's decision is succinct. It contains a clear adverse finding regarding breach of the conditions attached to the appellant's leave and a conclusion that the ground of refusal in paragraph 322(3) of the rules was made out. Perhaps surprisingly, the judge dismissed the appeal "under the Immigration Rules" but without expressly reaching a conclusion on the human rights grounds of appeal. Any failure in this regard, however, is not material.

7. The appellant's grounds of appeal set out the relevant chronology. They include an explanation for her breach of condition, based on her belief that a right to work from an earlier period of leave continued. So far as private life in the United Kingdom is concerned, there is very little indeed. The appellant arrived here in 2009 and has developed friendships. The grounds also contain an assertion that a family life has been established but there are no details at all (paragraphs 14 and 15 of the grounds).
8. A short bundle before the judge included a witness statement. Apart from the explanation for the breach of condition, there is, again, very little showing the appellant's ties here. There is brief mention in paragraph 6 of private and family life and of close links with "lots of friends in the UK", said to show a "strong private life". There is no mention of family members in the witness statement at all.
9. In these circumstances, the appellant's Article 8 case, although pleaded, was not developed. It has no real substance. Taking into account the Supreme Court judgment in Patel and Others [2013] UKSC 72 and guidance from the Upper Tribunal in Nasim and Others [2014] UKUT 00025, there were no prospects, on the evidence before the judge, of the appellant's private life ties (or any claimed family life) outweighing the public interest in the maintenance of immigration control. Nothing in CDS (Brazil) assists the appellant as the evidence fell very far short of showing any substantial ties.
10. I conclude that although the judge's decision did not expressly engage with the Article 8 grounds, the error is not material and the same overall conclusion, that the appeal fell to be dismissed, would have been inevitable on the evidence before him.

Notice of Decision

The decision of the First-tier Tribunal shall stand, as it contains no material error of law.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell