Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/02745/2013
IA/02758/2013
IA/02757/2013
IA/02759/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 13th June 2013	**On 4th July 2013**

Before

UPPER TRIBUNAL JUDGE RENTON

Between

ESMERALDA BAKOLLARI (FIRST APPELLANT)
AZEM ZAIMOVSKI (SECOND APPELLANT)
REJANA ZAIMOVSKI (THIRD APPELLANT)
SEAD ZAIMOVSKI (FOURTH APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms G Peterson, Counsel instructed by London Solicitors
For the Respondent: Mr C Avery, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellants are all citizens of Albania. They comprise the main Appellant, Esmeralda Bakollari, and her husband and two children. The main Appellant applied for leave to remain as a Tier 4 (General) Student Migrant. The other Appellants applied for similar leave as her dependants. Those applications were refused on 7th January 2013 for the reasons given in a Notice of Decision of that date. The Appellants appealed, and their appeals were heard by First-tier Tribunal Judge Herlihy (the Judge) sitting at Taylor House on 26th March 2013. She decided to allow the appeals on Article 8 human rights grounds. The Respondent sought leave to appeal that decision, and on 10th May 2013 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside. The main Appellant's application for leave to remain was refused because it was decided that she had failed to secure any points for Maintenance (Funds) under Appendix C of HC 395. This was because the Appellant had failed to show that she was in possession of the required sum of £7,600 for a consecutive 28 day period as the Appellant relied upon financial sponsorship from her husband which arrangement did not comply with the terms of paragraph 13 of Appendix C. The Judge did not disagree with this decision, but found that it amounted to a disproportionate breach of the Appellant's Article 8 rights. The reasons for that decision are given in paragraphs 10.6 to 10.8 inclusive of the Determination. The Judge was satisfied that the Appellants had a private life in the United Kingdom which would be interfered with by the decision to such a degree of gravity as to engage the Appellants' Article 8 rights. The Judge then carried out the balancing exercise necessary for any assessment of proportionality and found that the public interest was outweighed by the Appellants' circumstances. This was because the main Appellant had been in the UK since 2007 following a successive series of progressive studies. During that time the Appellant's husband had established a business in the UK, and one of her children had started attending school. The Appellant's husband had a bank account showing possession of the required funds for the required period, but this had not been taken into account when deciding the application under the Immigration Rules as the account was held in the sole name of the Appellant's husband. However those funds were genuinely available to the Appellant. The main Appellant and her family were able to maintain themselves more than adequately and to finance her studies.

3. Mr Avery argued that the Judge had erred in law in coming to this conclusion. The Judge had failed to carry out the balancing exercise properly. The Judge had not considered whether the family could return to Albania and pursue their private life there, and no weight had been attached to the fact that the Appellants only ever had temporary leave to be in the UK. The Judge had applied some sort of "near miss" principle.

4. In response, Ms Peterson referred me to her Rule 24 response and argued that there had been no error of law in the Judge's decision. The Judge sufficiently explained that decision. She set out the relevant factors at paragraph 10.6 of the Determination. She was entitled to attach weight to the fact that the main Appellant had reached the later stages of high level progressive studies in the UK.

5. I find no error of law in the Judge's Article 8 decision. The Judge followed the format given by the decision in **R v SSHD ex parte Razgar [2004] UKHL 27**, and demonstrated that she had carried out the balancing exercise necessary for any assessment of proportionality. The Judge was entitled to attach less weight to the public interest by virtue of the fact that the Appellant's family had sufficient funds to finance her proposed further studies, and also by the fact that the Appellant was proposing to complete a credible course of study in the UK. The Judge's reasoning was not inadequate.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I find no reason to do so.

Signed Date

Upper Tribunal Judge Renton