Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00664/2012

THE IMMIGRATION ACTS

Heard at Stoke-on-Trent	**Determination Promulgated**
On 18 March 2014	**On 26 March 2014**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

RAJA ADNAN SANGAR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Hussain, instructed by Burton & Burton Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Raja Adnan Sangar, was born on 3 July 1987 and is a male citizen of Pakistan. A decision to make a deportation order was made in respect of the

appellant under Section 32(5) of the UK Borders Act 2007. The appellant was sentenced on 13 December 2011 to twelve months' imprisonment for having perverted the course of justice. He appealed against the decision to the First-tier Tribunal (Judge P J M Hollingworth; Mr G F Sandall) which, in a determination promulgated on 23 January 2014, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Granting permission, Judge Andrew noted that:

> The grounds complain that the First-tier Tribunal Judge made reference to an NOMS report in his determination but that no such NOMS report was before him. This appears from the file to be the case.

3. At the hearing, I was able to produce from the Tribunal file a copy of a letter dated 29 October 2012 which had been sent by the Home Office to the Tribunal and also to the appellant's solicitors. The letter enclosed a copy of the NOMS report. The letter had been received by the Tribunal office on 30 October 2012 (as evidenced by the stamp on the face of the letter). As a consequence, where the Tribunal [at 112] wrote that it accepted "the assessment made in that report including the risk assessment" (referring to the NOMS report) the Tribunal had before it a copy of the report even though, as both I and the respondent accept, Mr Hussain (who also appeared before the First-tier Tribunal) had not been provided with a copy; at [53] the Tribunal had noted Mr Hussain's submission that he did not have the NOMS report although it does not appear to have occurred to the Tribunal to provide Mr Hussain with a copy from its own papers.

4. Whilst acknowledging that Mr Hussain was put at some disadvantage by not having sight of the report, I do not find that anything turns upon this issue. The report contains an assessment of the appellant's risk of reoffending as low and, as I have noted above, the Tribunal accepted that assessment. Although it is no doubt very frustrating for Mr Hussain that a copy of the report was not in his instructions from his instructing solicitors, it is difficult to see what Mr Hussain might have submitted regarding the report which would have taken the matter any further than that. Before me, Mr Hussain submitted that the Tribunal had not given sufficient weight to the report, but I do not find that that submission is made out given that they accepted its conclusions without demur. Mr Hussain's further submission that, having accepted the conclusions of the report, the appeal should have been allowed, amounts to a *non sequitur*. There was nothing to prevent the First-tier Tribunal accepting that the appellant was at low risk of reoffending whilst, at the same time and having considered all the relevant evidence, proceeding to dismiss the appeal. Had the report been before the Tribunal and the Tribunal had failed to consider it, then an error of law may have occurred. In the circumstances, the fact that the report had not been seen by the appellant's counsel, whilst unfortunate, is immaterial.

5. The second ground of appeal concerns the Tribunal's assessment of family and private life for the purpose of Article 8 ECHR. At [111], the Tribunal wrote this:

> We do not find that the first criterion in **Razgar** is satisfied in relation to family life. We have rejected the credibility of the appellant and Mrs Humera Ikram. We set out our findings in relation to the evidence above. We do not accept that genuine family life is led between the appellant and Mrs Humera Ikram. The typed skeleton argument attached to the papers at paragraph 3 refers to Article 8 'family life' to which this appeal is now directly related. We treat the contact between the appellant and Mrs Humera Ikram and her children as aspects of the appellant's private life. On this basis we find that the first four criteria in **Razgar** are established. The question arises as to proportionality.

6. At [22] *et seq*, the Tribunal set out in some detail its findings as to credibility of the evidence given by the appellant and Mrs Ikram. Mrs Ikram has a number of children (not the appellant's natural children) and the appellant claimed that he lived with her and the children. The Tribunal found the appellant's evidence to "disingenuous" and in parts entirely untrue. The Tribunal found that "doubt arises as to the strength of [the appellant's and Mrs Ikram's) mutual commitment in the light of [the delay of five months before the appellant resided with Mrs Ikram at her home following his release from prison]." For example, the Tribunal found that the appellant's claim to pick up Mrs Ikram's children from school was flatly contradicted by evidence from the head teacher of the school which indicated that the appellant had never been to the school and that the teacher had had no contact with the appellant. Consequently, the Tribunal rejected that the expert report of Mr Nusendo on the basis that it was predicated on an untrue account provided to him by the appellant. The Tribunal also found [95] that Mrs Ikram had given inconsistent evidence regarding her relationship with the appellant.

7. Having considered the findings of fact of the Tribunal and the reasons given for those findings, I can identify no error of law. The Tribunal has considered carefully the evidence given by each of the witnesses and has given entirely sound reasons for rejecting the credibility of that evidence. However, at [111] which I have set out in full above, acknowledge that the Tribunal has fallen into some confusion. On the one hand, having rejected the credibility of the evidence of the appellant and Mrs Ikram as to the nature of their relationship, the Tribunal has concluded that there was no family life between the appellant and Mrs Ikram with her children. On the other hand, it uppers to have accepted that Mrs Ikram and the appellant have some relationship and the Tribunal has therefore considered that relationship as an aspect of the private lives of the individuals involved. The Tribunal proceeded to consider Section 55 of the 2009 Act as regards the best interests of the children and also the reasonableness of Mrs Ikram (as a British citizen) relocating with the appellant to Pakistan. Those are aspects of the analysis would normally flow from the existence of family life rather than private life; although it clearly wished to record its view of the unreliability of the evidence it heard from the witnesses, the Tribunal has, in effect, completed an analysis of family life for the purposes of Article 8 ECHR after all.

8. In the circumstances, it may have been more logical for the Tribunal to have accepted that family life between Mrs Ikaram and the appellant did exist but that differed in many respects from the family life as described by the appellant and Mrs Ikaram.

Such a finding would have led the Tribunal to consider Section 55 and the reasonableness of family life being pursued abroad without creating the apparent anomaly of rejecting the existence of family life altogether whilst also having regard to those aspects of the case.

9. If the approach adopted by the Tribunal does amount to an error of law, the question remains whether it was in any way material to the outcome of the appeal. I consider that it is not. Whether any relationship such as exists between Miss Ikram, the children and the appellant is characterised as family life or private life, the impact of the removal of the appellant upon Mrs Ikram and the lives of the children would need to be assessed. The Tribunal has completed that assessment and I do not accept Mr Hussain's submission that the assessment is flawed or thast it would have led to a different outcome had the Tribunal found that family life existed. The Tribunal was entitled to find at [115] that "the conduct of the appellant outweighs the positive factors in favour of his remaining and [we] do not find there will be a breach of the appellant's Article 8 right to a private life in the United Kingdom. We do not find that there will be a breach of the Article 8 rights to a private life with Mrs Humera Ikaram or her children for the same reasons". Even if the Tribunal had characterised what it describes as private life as family life, it is clear that that outcome would have been the same. Further, at [116] the Tribunal has accurately set out the jurisprudence relating to the Immigration Rules (see **MF (Nigeria) [2013] EWCA Civ 1192**)). Although it does not refer to the case, it is also apparent that the Tribunal's decision was in line with the decision of the Tribunal in **Gulshan (Article 8 – new Rules – correct approach) [2013] UKUT 640 (IAC)**:

> *On the current state of the authorities:*
>
> *(a) the maintenance requirements of E-LTRP.3.1-3.2 stand, although Blake J in R (on the application of MM) v Secretary of State for the Home Department [2013] EWHC 1900 (Admin) said that they could constitute an unjustified and disproportionate interference with the ability of spouses to live together; he suggested that an appropriate figure may be around £13,400, and highlighted the position of young people and low wage earners caught by the higher figure in the rules;*
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> *(b) after applying the requirements of the Rules, only if there may be arguably good grounds for granting leave to remain outside them is it necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under them: R (on the application of) Nagre v Secretary of State for the Home Department [2013] EWHC 720 (Admin);*
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> *(c) the term "insurmountable obstacles" in provisions such as Section EX.1 are not obstacles which are impossible to surmount: MF (Article 8 – new rules) Nigeria [2012] UKUT 393 (IAC); Izuazu (Article 8 – new rules) [2013] UKUT 45 (IAC); they concern the practical possibilities of relocation. In the absence of such insurmountable obstacles, it is necessary to show other non-standard and particular features demonstrating that removal will be unjustifiably harsh: Nagre.*

The Secretary of State addressed the Article 8 family aspects of the respondent's position through the Rules, in particular EX1, and the private life aspects through paragraph 276ADE. The judge should have done likewise, also paying attention to the Guidance. Thus the judge should have considered the Secretary of State's conclusion under EX.1 that there were no insurmountable obstacles preventing the continuation of the family life outside the UK. Only if there were arguably good grounds for granting leave to remain outside the rules was it necessary for him for Article 8 purposes to go on to consider whether there were compelling circumstances not sufficiently recognised under the Rules.

10. The facts in this appeal as found by the Tribunal did not require it, having concluded that the appellant could not succeed under the Immigration Rules, to consider a grant of leave outside the Rules under Article 8 ECHR. I find that, notwithstanding any errors in the approach or analysis of the Tribunal such as I have described above, it is not necessary to set aside the determination of the First-tier Tribunal. Consequently, this appeal is dismissed.

DECISION

11. This appeal is dismissed.

Signed Date 24 March 2014

Upper Tribunal Judge Clive Lane