



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/22743/2012

THE IMMIGRATION ACTS

Heard at : Field House
On : 24 February 2014

Determination Promulgated
On : 27 February 2014

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SATHYA MURUGANANDAM

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr G Jack, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Ms Muruganandam is a citizen of India born on 22 February 1982. Although this is the Secretary of State's appeal, it is convenient to refer to Ms Muruganandam as the appellant.
2. The appellant's circumstances reflect those of the various appellants in the cases of Nasim and others (Raju: reasons not to follow?) [2013] UKUT 00610 ("Nasim 1") and

Nasim and others (Article 8) Pakistan [2014] UKUT 25 (“Nasim 2”), in that she secured a decision in her favour in the Upper Tribunal in respect of her unsuccessful appeal against the decision of the Secretary of State to refuse her application for leave to remain in the United Kingdom as a Tier 1 (Post-Study Work) Migrant. The Upper Tribunal’s favourable decision followed the approach of the Presidential Tribunal in Khatel and others (s85A; effect of continuing application) [2013] UKUT 00044. As in those cases, following the judgment of the Court of Appeal in Secretary of State for the Home Department v Raju & Ors [2013] EWCA Civ 754, directions were issued by the Upper Tribunal proposing to set aside the determination of the Upper Tribunal pursuant to rule 45(1)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Further to the appellant’s objection to such course, the appeal came before me to consider that proposal.

3. The appellant’s circumstances, as stated in the respondent’s refusal decision, are that she entered the United Kingdom on 1 October 2010 with entry clearance conferring leave to enter as a Tier 4 (General) Student valid until 30 January 2012 and was subsequently granted further leave until 17 June 2012. On 3 April 2012 she applied for leave to remain as a Tier 1 (Post-Study Work) Migrant under the Points Based System. Her application was refused on 11 October 2012 on the basis that she was unable to meet the requirements of Appendix A of the Immigration Rules. She was awarded zero points for the date of her award as she had failed to show that she had been awarded her eligible qualification, an MSc in Fashion Technology from the University of Wales, no more than twelve months before the date of her application. That in turn led to the award of zero points for English language under Appendix B. Her application was accordingly refused under paragraphs 245FD(c) and 245FD(d) of HC 395 and a decision was made to remove her by way of directions under section 47 of the Immigration Asylum and Nationality Act 2006.

4. The appellant’s appeal against that decision was dismissed by the First-tier Tribunal in a determination promulgated on 27 December 2012. The First-tier Tribunal Judge found that she was unable to meet the requirements of the immigration rules since she had been awarded her degree in June 2012 and had thus not obtained the relevant qualification at the time she made her application on 3 April 2012 as the rules required. The judge dismissed the appeal under the immigration rules as well as on Article 8 grounds, but allowed the appeal against the section 47 removal decision as not being in accordance with the law.

5. Following a grant of permission to appeal, the Upper Tribunal set aside the First-tier Tribunal’s decision in the light of the decision in Khatel and others (s85A; effect of continuing application) [2013] UKUT 00044 and substituted a decision allowing the appeal under the immigration rules.

Appeal hearing and submissions

6. At the hearing there was no appearance by or on behalf of the appellant and no explanation for her absence. I heard from Mr Jack who relied upon the decisions in Raju and Nasim in submitting that the appeal had been correctly refused in the First-tier Tribunal under the immigration rules and on Article 8 human rights grounds. He

submitted that the judge's decision did not contain any errors of law and had correctly been allowed with respect to the section 47 removal decision.

Consideration and findings

7. The appellant's case is identical in all material respects to those of the appellants in Nasim 1 and 2 and the reasoning in Nasim 1 therefore applies to her. Following the Court of Appeal judgment in Raju, the Upper Tribunal's decision in Khatel is no longer a correct statement of the law and accordingly the decision of Upper Tribunal Judge O'Connor of 15 April 2013 has to be set aside pursuant to rule 45 (1)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

8. I therefore turn to the decision of First-tier Tribunal Judge Scott and the appellant's grounds of appeal relating to that decision. Judge Scott found that the appellant did not meet the requirements of the immigration rules and set out his detailed reasons at paragraphs 16 to 26 of his determination. There is no error of law in his decision in that regard. The evidence is that the appellant was awarded her degree by the University of Wales on 27 June 2012, that plainly being the relevant date as made clear in Nasim 1. Her application for leave to remain was made on 3 April 2012, prior to the award of her degree and accordingly, following the principles in Raju and Nasim 1, she could not meet the requirements of the immigration rules.

9. The judge's findings on Article 8 have not been challenged in the grounds of appeal. Indeed, the judge made detailed and cogently reasoned findings in that respect and reached a conclusion that was open to him on the evidence before him and is entirely consistent with observations made in Patel & Ors v Secretary of State for the Home Department [2013] UKSC 72 at paragraph 57 and in the head-note to Nasim 2. It is also accepted by the respondent that the section 47 removal decision was unlawful and accordingly the judge properly allowed the appeal on that limited basis.

DECISION

10. I set aside the determination of Upper Tribunal Judge O'Connor and substitute a decision on the following basis:

11. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision, to dismiss the appeal against the decision to refuse to vary leave but to allow the appeal against the section 47 removal decision, stands.

Signed

Upper Tribunal Judge Kebede

Dated: