Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/26689/2013
IA/26697/2013
IA/26707/2013

THE IMMIGRATION ACTS

Heard at: Manchester	**Determination Promulgated**
On: 12th June 2014	**On: 4th August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

And

Dhvani Piyushbhai Jani
Bhoomikaben Vinubhai Patel
Anuska Jani
(No anonymity direction made)

Respondents

For the Appellant: Mr Harrison, Senior Home Office Presenting Officer
For the Respondents: Ms Barton, Sabz Solicitors LLP

DETERMINATION AND REASONS

1. The Respondents are all nationals of India. They are respectively a husband, wife and their minor child. On the 19th November 2013 the First-tier Tribunal (Judge Heynes) allowed their linked appeals against the Secretary of State's decision to refuse to vary their leave to remain and to remove them from the United Kingdom pursuant to s47 of the Immigration, Asylum and Nationality Act 2006.

2. The First Respondent Mr Jani had come to the UK on the 16th May 2004 as a student. The Secretary of State had thereafter varied his leave to remain on several occasions, first as a student and latterly as a Tier 1 Migrant. At all times since his arrival in this country Mr Jani has had valid leave and has complied with the terms of that leave. The application that became the subject of this appeal was made on the 16th May 2013 and it was an application for further leave to remain, this time as a Tier 1 (General) Migrant. The Second and Third Respondents were dependents upon this application and appeal.

3. The applications were refused because Mr Jani had failed to supply specified evidence of his self-employment as required by Appendix A of the Rules. He had submitted accounts but they were not prepared by an accountant registered with one of the approved supervisory bodies (ie ACCA etc).

4. On appeal to the First-tier Tribunal Mr Jani and his dependents submitted that they had not realized that the accounts from this firm were not acceptable. The Secretary of State had previously accepted accounts prepared by this firm. When Mr Jani had received a letter, prior to the refusal, alerting him to the problem he had written back to the Secretary of State offering to have his accounts signed off by a registered firm if this was necessary, but had received no response. He subsequently had accounts prepared by registered accountants but these were not submitted with the application and so fell foul of section 19 of the Borders Act 2007 and could not be relied upon. Judge Heynes dismissed the appeal under the Rules.

5. The Respondents had further submitted that their removal would be a breach of Article 8 ECHR. Judge Heynes noted that this family had been in the UK for some nine and a half years and that there was a private life. Removal from the UK would result in an interference with that private life. In respect of proportionality Judge Heynes noted that Mr Jani had made a blunder in not realizing that the original accountants were not registered, but that he had subsequently produced accounts signed off by registered accounts which would have resulted in him getting further leave to remain had they been received in time. He had, in essence, produced the right information in the wrong format. Finding that there could be no reasonable justification for this interference, he allowed the appeal.

6. The Secretary of State now has permission to appeal on the grounds that Judge Heynes failed to take the decision in Nagre[1] into account. It is submitted that there was a misdirection in law in that the determination fails to take into account the weight to be attached to the Immigration Rules. MF Nigeria[2] is relied upon to support the proposition that the Rules are a 'complete code' as far as Article 8 is concerned and that the appeal could only therefore have been allowed if the Tribunal had identified some 'exceptional circumstances'.

Error of Law

7. I am not persuaded that the grounds are made out.

8. Nagre does not introduce a 'test' to the effect that some exceptional circumstances must be identified before a Judge can consider Article 8. The point that Sales J makes is this: if there is not a good arguable case to look at Article 8 then *it is not necessary* to do so. That is because the Rules have already provided for Article 8 considerations in most circumstances. It is not an authority for saying that the court *cannot* go on to look at Article 8 unless the claimant has surmounted some intermediate hurdle of exceptionality. The "exceptionality test" has been comprehensively rejected by the House of Lords in Huang [2007] UKHL 11, by the Court of Appeal in MF (Nigeria) v SSHD [2013] EWCA Civ 1192 and indeed by recent ministerial statements. I note that in this case the Secretary of State had not considered the claims under any of the provisions of the Rules relating to human rights. Judge Heynes plainly considered that there was merit in the Article 8 claim, since he allowed it on that ground. It follows that there was a good arguable case.

9. In respect of the ground asserting that MF (Nigeria) finds the rules as a whole to be a complete code this is simply wrong. MF (Nigeria) was concerned with those provisions relating to deportation, not private life in general. I do not consider there to be any error of law in the approach taken by Judge Heynes.

10. Even if I am wrong I note that at the date of the appeal before me the First Respondent has had lawful leave to remain in this country for over ten years and now qualifies for indefinite leave to remain in any event. As such any error that might be found in the determination is irrelevant.

[1] R (Nagre) v SSHD [2013] EWHC 270
[2] MF (Nigeria) [2013] EWCA 1192

Decisions

11. The determination does not contain errors of law such that it should be set aside.

12. I make no direction as to anonymity.

Deputy Upper Tribunal Judge Bruce
20th July 2014