Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/41528/2014

THE IMMIGRATION ACTS

Heard at Field House **Decisions and Reasons Promulgated**
On 13 July 2015 **On 14 August 2015**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

SANDEEP PATEL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S. Bellara, counsel instructed by Edward Alam & Associates
For the Respondent: Miss A. Everett, Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant appealed against the respondent's decision dated 01 October 2014 to refuse to extend his leave to remain as the dependent of a Tier 4 (General) Student Migrant and to remove him from the UK by way of directions made under section 47 of the Immigration, Asylum and Nationality Act 2006. First-tier Tribunal Judge Symes allowed the appeal in a decision promulgated on 05 March 2015. The respondent was granted permission to appeal against the decision. In a decision dated 11 June

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2015 I found that the decision involved the making of an error on a point of law and I set aside the First-tier Tribunal decision. The appeal now comes before the Upper Tribunal to remake the decision.

Decision and reasons

2. The appellant entered the UK on 23 July 2010 with entry clearance as the dependent partner of a PBS migrant that was valid until 10 April 2011. At the time his wife, Mantaben Sandeepkumar Patel, was studying in the UK. The immigration rules allowed her to apply for her partner to accompany her while she studied. The appellant's wife continued her studies and they were granted further leave to remain until 18 August 2014.

3. On 01 July 2013 the immigration rules were amended to restrict the number of students who were allowed to have family members with them in the UK (HC 244). Only students who were studying at post-graduate level, who were sponsored by recognised bodies or on a particular scheme would be permitted to apply for their partner to remain with them (paragraph 319C).

4. On 01 August 2014 the appellant applied for further leave to remain as a dependant. Although his wife was granted further leave to remain as a Tier 4 (General) Student until 22 December 2015 the appellant's application was refused in a notice of decision dated 01 October 2014 because his wife was not a government sponsored student and was not studying at a Higher Education Institute. She proposed to study for one year towards a Diploma in Healthcare Management (Level 7) at the International College of Professional Studies Ltd. She is due to complete the course at the beginning of August 2015.

5. At the hearing before Judge Symes it was accepted that the appellant did not meet the requirements of the immigration rules but it was argued that requiring the appellant to leave the UK while his wife was still studying would separate the family and amount to a disproportionate breach of their rights under Article 8 of the European Convention. The appellant does not seek to argue that the family should remain on a longer-term basis.

6. Judge Symes identified relevant authorities to support the argument that private life is a wide concept that can encompass a number of aspects of a person's life: see *Niemitz v Germany* [2992] ECHR 80. He also noted that in the past the Tribunal has found that a significant course of professional study might, in certain circumstances, engage the right to private life: see *CDS (PBS "available": Article 8) Brazil* [2010] UKUT 00305.

7. The *obiter* comments made by Lord Carnwarth at paragraph 57 of the Supreme Court decision in *Patel and Ors v SSHD* [2013] UKSC 72 made the point that the essential character of the right to private life must be engaged for the right to be protected under Article 8. However, it was not a central argument before the Supreme Court and the relevant authorities were not considered. Although Lord Carnwarth made a general statement

that Article 8 does not on the face of it protect a right to education, as has been pointed out in other cases, the right to private life is sufficiently broad to include a number of aspects of a person's life.

8. What is clear is from more recent authorities such as *Nasim and Others (Article 8)* [2014] UKUT 00025 is that the right to private life is only likely to be engaged in student cases if there are compelling circumstances. The impact of section 117B of the Nationality, Immigration and Asylum Act 2002 also serves to emphasise that private life issues arising when a person's immigration status is precarious are likely to be given little weight when assessing the proportionality of an immigration decision.

9. It is clear from Judge Symes' summary of the evidence that the family has invested a considerable amount in the sponsor's course of study in the UK. It is no doubt of real importance to the appellant's wife that she completes her course of study. It is understandable that she did not want to abandon the course and return to India with her husband and their young child, or in the alternative, have to choose to continue the course but face a period of separation from them.

10. However, the course of study that she was following was not of the kind that the Tribunal envisaged might be of sufficient seriousness to engage the fundamental operation of Article 8. In *CDS (Brazil)* the Tribunal considered that a course of professional study over a long period of time might engage the operation of Article 8 cumulatively but made clear that there was no 'human right' to come to the UK for education. It emphasised that Article 8 did not provide a general discretion to dispense with the requirements of the immigration rules.

11. In this case the appellant's wife was granted leave to remain in order to study a relatively short course of one year. Although no doubt a useful qualification it was not a significant course of professional study such as medicine or law. While they invested money in the course it does not seem to have been a course of study of such significance that it was likely to reach the threshold to engage rights under Article 8. The appellant's wife is due to complete the course at the beginning of August 2015. At the date of the hearing she was about to finish the course and will therefore be in a position to return to India with her husband and child. Returning to India with her family before the expiry of her leave would no longer impact on her education and it would therefore be reasonable to expect her to return with the appellant.

12. Although the appellant's wife has leave to remain until 22 December 2015 the additional few months do not go to the core of any potential Article 8 rights because they were granted in order to allow time for her to tie up her affairs following the completion of her course. The fact that she has leave to remain for a few more months entitles her to remain in the UK but does not necessarily amount to a <u>right</u> to remain with her family. If she now has to leave the UK in order to continue her family life with the appellant and her young child it will not interfere with her education. They are now in a position to return to India as a family unit. If his wife does

need to tie up some of her affairs before leaving any separation is only likely to be for a minimal period of time and is therefore unlikely to impact on their family life or the best interests of their young child in any significant way. For these reasons I conclude that removal of the appellant in consequence of the decision would not interfere with his right to family life, or his wife's right to private life as a student, in a sufficiently grave way as to engage the operation of Article 8 (questions (i) & (ii) of Lord Bingham's five stage approach in *Razgar v SSHD* [2004] INLR 349).

13. Even if I am wrong in relation to the issue of whether Article 8 is engaged I find that the circumstances of this case do not disclose any compelling circumstances that would render the appellant's removal disproportionate: see *SSHD v SS (Congo)* [2015] EWCA Civ 387. In general terms the appellant may consider it unfair that the rules were changed to restrict the number of students who were allowed to remain with their partners when he had already been in the UK for several years with his wife. However, it is not unfair in legal terms because the respondent is entitled to change the rules as long as any unfairness caused by the changes is not disproportionate. There is no evidence to show that it is disproportionate on the facts of this case. For the reasons given above any perceived unfairness does not impact on their family situation as it stands at the hearing.

14. While the appellant and his wife would no doubt prefer to remain in the UK for the last few months of her visa, in circumstances where she is about to complete the course, their desire to remain does not equate to a right to remain. For these reasons I conclude that the appellant's removal in consequence of the decision would be proportionate (points (iv) & (v) of Lord Bingham's five stage approach in *Razgar*).

15. I conclude that the appellant does not meet the requirements of the immigration rules and that his removal in consequence of the decision would not be unlawful under section 6 of the Human Rights Act 1998.

<u>DECISION</u>

I remake the decision and DISMISS the appeal under the immigration rules and on human rights grounds

Signed Date 10 August 2015

Upper Tribunal Judge Canavan