Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/47879/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 4 January 2015	**On 9 February 2015**

Before

THE HONOURABLE MRS JUSTICE PATTERSON
DEPUTY UPPER TRIBUNAL JUDGE MACDONALD

Between

MR SAQLAIN ABBAS
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss D Qureshi, Counsel instructed by Ilford Law Chambers
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against a decision of the First-tier Tribunal promulgated on 25 June 2014. In that decision letter the appellant appealed the decision of the respondent to refuse to vary and extend his leave to remain to that of a Tier 1 (Post-Study Work) Migrant and to remove him by way of directions made under Section 47 of the Immigration, Asylum and Nationality Act 2006. That application to the respondent was dismissed.

2. The appellant appealed on the basis that the First-tier Tribunal Judge's assessment of proportionality was flawed. It was contended that he had erred in his assessment. The appellant simply wished to gain work

experience which would enhance his academic qualifications. The fact that the post-study work route has now been closed by the respondent did not necessarily result in a finding that he should be removed. The case of **CDS v Secretary of State for the Home Department [2010] UKUT 00305** was relied upon as is the fact that the appellant's course from the outset involved a requirement to gain practical experience.

3. Permission to appeal was granted on 8 December 2014 on the basis that it was arguable that the proportionality exercise was flawed.

4. The appellant is a citizen of Pakistan. He entered the United Kingdom on 15 September 2015 with entry clearance as a Tier 4 (General) Student Migrant that was valid until 23 January 2012. On 23 January 2012 the appellant applied to vary and extend his leave to remain to that of a Tier 1 (Post-Study Work) Migrant. On 9 May 2012 a letter from the University of Wales confirmed that the appellant had successfully completed his masters in business administration degree and said that the degree certificate would be sent to his educational institution, the London College of Business.

5. The respondent refused the appellant's application on the basis that the educational award postdated the application. The respondent submitted that based upon the Court of Appeal decision in Secretary of State for the Home Department v Raju & Ors [2013] EWCA Civ 754 points for attributes under T 10 of Appendix A of the Immigration Rules could only be awarded if that qualification was obtained before the date of the application.

6. That refusal was appealed with the appeal proceeding solely on the argument that the appellant's removal was incompatible with his right to a private life under Article 8 of the European Convention.

7. The appellant asserted at the appeal that his removal would interfere with his right to a private life in a sufficiently serious way as to engage the European Convention.

8. In the decision letter, in paragraph 12, the First-tier Tribunal Judge found that the appellant did not have a partner or children in the United Kingdom and so could not qualify under the requirements of Appendix FM and he did not qualify under the Immigration Rules under Rule 276ADE.

9. The decision letter then moved to consider the appellant's human rights claim. In that regard, in paragraph 15 of the decision letter the First-tier Tribunal Judge, said:

> "15. The appellant has produced some evidence to show that he has studied in the UK and is likely to have obtained an MBA although the degree certificate has not been produced in evidence. No other evidence has been produced to show any particular ties in the United Kingdom. There is no evidence of employment, relationships with friends or of other strong connections in the United Kingdom. The appellant has not lived in the United

Kingdom for a period of time that would normally be considered long residence under the Immigration Rules. No doubt he has made some friends and limited connections in the three years that he has resided in the UK but I find that the appellant has failed to produce sufficient evidence to show that removal in consequence of the decision is likely to interfere with his right to a private life in a sufficiently grave way so as to engage the operation of Article 8 of the European Convention (points (i) and (ii) of Lord Bingham's five stage approach in **Razgar v SSHD [2004] INLR 349**)."

10. The decision then went on, in paragraph 16, to say as follows:

> "16. In assessing whether the appellant's removal in consequence of the decision would be justified and proportionate I have given weight to the fact that the private and family life provisions of the Immigration Rules now reflect the respondent's position as to where the balance should be struck in relation to Article 8 (see paragraph GEN.1.1 Appendix FM) but cases that fall outside those requirements can still engage the operation of Article 8 in certain circumstances: see **Huang v SSHD [2005] UKHL 11** and **Patel & Others v SSHD [2013] UKSC 72**."

11. The decision continued,

> "17. The appellant does not meet the requirements of the Immigration Rules and the normal course of action would be to require him to leave the United Kingdom. While maintenance of effective immigration control is an important factor the balancing exercise under Article 8 can be complicated and must take into account a number of different factors balancing the public interest against the specific circumstances of each individual.
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> 18. The purpose of the post-study work category was to provide young people who had completed their course of study with an opportunity to gain some work experience in the United Kingdom before returning home. The category provided no expectation or route to settlement and has now been closed. The Secretary of State is entitled to change the Immigration Rules as necessary. The appellant is a foreign national who is subject to immigration control. While it is understandable that the appellant might prefer to remain and gain some work experience in the UK, unfortunately, his desire to remain does not necessarily equate to a right to remain."

12. In conclusion the judge found that the appellant's desire to obtain further work experience did not disclose sufficient compelling circumstances to show that his removal would breach the European Convention and, for that reason, he concluded that it would be justified and proportionate to require the appellant to return to Pakistan if he did not otherwise meet the

requirements of the Immigration Rules, which, in the circumstances of this case, he did not.

13. The issue of post-study work and its relationship to Article 8 was considered in the case of **Nasim and others [2014] UKUT 25** and, in particular, in the paragraphs at the end of section C of the judgement which is entitled "Article 8 in the context of work and studies". At the end of that section the Tribunal concluded as follows:

> "21. In conclusion on this first general matter, we find that the nature of the right asserted by each of the appellants, based on their desire, as former students, to undertake a period of post-study work in the United Kingdom, lies at the outer reaches of cases requiring an affirmative answer to the second of the five **Razgar** questions and that, even if such an affirmative answer needs to be given, the issue of proportionality is to be resolved decisively in favour of the respondent, by reference to her functions as the guardian of the system of immigration controls, entrusted to her by Parliament."

14. The decision also considered the case of **CDS Brazil**, which was relied upon by the appellant in his grounds of appeal. That decision is dealt with in section I of the judgment in the case of **Nasim** which is entitled "Scope of **CDS Brazil**". The relevant paragraphs in relation to that read:

> "40. So far as the present point is concerned, what was said in **CDS** has no material bearing. That case involved the interpretation of Immigration Rules, rather than the effect of changes in such Rules. Furthermore, it is important to emphasise that the appellant in **CDS** was faced with a hypothetical removal, which would have prevented her from completing the course of study for which she had been given leave. In the present cases, each of the appellants has finished the course (or latest course) to which their leave to remain as a student related. Their complaint is that they were not afforded the opportunity of undertaking two years of post-study work in the United Kingdom, which they could have taken, had the Rules not changed."

> "41. Mr Jarvis urged us to find that the obiter remarks in **CDS** regarding Article 8 were no longer good law, in the light of **Patel and Others**. We find that would go too far. It is true that the Tribunal in **CDS** made reference to the particular passage of the judgment of Sedley LJ in **Pankina** regarding the need for the Home Office 'to exercise some commonsense', which drew comment from Lord Carnwath at [57] of **Patel and Others** (see above). The Tribunal did, however, expressly acknowledge that it was unlikely a person would be able to show an Article 8 right by coming to the United Kingdom for temporary purposes. The chances of such a right carrying the day have, we consider, further diminished, in the light of the judgments in **Patel and Others**. It would, however, be wrong to say that the point has

> been reached where an adverse immigration decision in the case of a person who is here for study or other temporary purposes can never be found to be disproportionate. But what is clear is that, on the state of the present law, there is no justification for extending the obiter findings in **CDS**, so as to equate a person whose course of study has not yet ended with a person who, having finished their course, is precluded by the Immigration Rules from staying on to do something else."

15. The Upper Tribunal then proceeded to consider the individual cases that were before it. We can see no basis for taking a different approach in the instant case.

16. Counsel for the appellant today has been extremely realistic. She has relied upon the grounds of appeal which have been lodged and added simply that the appellant had a legitimate expectation to remain. We reject those submissions. The First-tier Tribunal Judge was entirely correct in his approach which followed, although did not cite, the case of **Nasim**.

17. What was being sought here in reality was an extension to leave to remain for socio-economic purposes to enable the appellant to obtain a good job on his return to his country. That in itself cannot engage Article 8. In any event, removal in the circumstances would be proportionate to the legitimate public end, namely the operation of a coherent and fair system of immigration control. There was no basis for the appeal to succeed on the grounds as originally formulated and as orally supplemented in terms of legitimate expectation. No basis for a legitimate expectation was put before us by the appellant. There is no basis upon which a legitimate expectation can be found in the circumstances of this case.

18. For those reasons we dismiss this appeal.

Notice of Decision

The appeal is dismissed on human rights grounds.

No anonymity direction is made.

Signed Date 6 February 2015

Mrs Justice Patterson