Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: IA/05012/2015**

IA/05016/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15th July 2016	**On 27th July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MRS EANJALA PANOURANGAN (FIRST APPELLANT)
MR VENKATESH SIVAGNANAM (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr S Karim, Counsel
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of India born respectively on 23rd November 1988 and 12th August 1978. The first Appellant was granted limited leave to enter the UK on 3rd October 2013 until 30th May 2015 as a Tier 4 Student. On 27th August 2014 a decision was made to curtail her leave

until 26th October 2014. The second Appellant's leave was as a dependant of the first Appellant. His leave was similarly curtailed.

2. The Appellants appealed and the appeal came before Judge of the First-tier Tribunal Youngerwood on 24th August 2015. In a decision and reasons promulgated on 21st September 2015 the Appellants' appeals were allowed under Article 8 of the European Convention of Human Rights.

3. On 30th September 2015 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. On 15th February 2016 Judge of the First-tier Tribunal Nicholson granted permission to appeal. Judge Nicholson noted that the First-tier Tribunal Judge had allowed the appeals based on a private life connected to the principal Appellant's studies and employment. He noted that a contention was made that the judge had erred in affording weight to the principal Appellant's employment because the Appellant was working illegally as she commenced employment after her leave as a student had been curtailed and at a time when she was no longer studying. He noted however that the judge had made it clear at paragraphs 23 and 25 that he considered the Appellant's employment was a valuable service to the community bringing the case within the guidance set out in *UE (Nigeria) [2010] EWCA Civ 975*. Judge Nicholson considered that it was arguable that, if the Appellant was working illegally, the judge erred in so doing and consequently granted permission to appeal on all grounds.

4. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. I note that this is an appeal by the Secretary of State. However for the purpose of continuity throughout the appeal process the Secretary of State is referred to herein as the Respondent and Mrs Panourangan and Mr Sivagnanam as the Appellants. The Appellants appear by their instructed Counsel Mr Karim. The Secretary of State appears by her Home Office Presenting Officer Mr Tarlow. There is no Rule 24 response served by the Appellants.

Submissions/Discussions

5. Mr Tarlow relies on the Grounds of Appeal. He submits that there is nothing exceptional about this case. His first argument is that the First-tier Tribunal Judge misdirected himself in his approach to the proportionality exercise and that he had failed to consider the weight to be attached to the fact that the Appellant had a remedy to her predicament in the form of a fresh application from India. He contends that the Secretary of State had allowed her ample opportunity in the provision of granting her over the required 60 day period to find another Sponsor before her leave was curtailed as evidenced by the letter of refusal. He contended it was a proportionate response to expect her to apply again properly in order that her circumstances be assessed particularly in the light of the fact that she was now intending to complete a different course of study with a different Sponsor than the one she was originally admitted to attend. He submits that the judge had failed to provide reasons for why

he considered the case to be exceptional to the point it required consideration outside the Rules and that whilst at paragraph 20 of the determination the judge has recorded that the decision was of sufficient gravity in relation to the particular Appellant's private life so as to engage Article 8, he has failed to indicate why he has reached this conclusion.

6. He further contends that the judge has not followed current case law and refers me to the lengthy extract from *Nasim and Others v Secretary of State for the Home Department [2014] UKUT 0025* referred to in the Grounds of Appeal. He further contends that the Appellant's prohibited employment was not something which should have weighed in the Appellant's favour when considering proportionality.

7. Mr Tarlow acknowledges that the Appellant missed some induction classes which explain the procedures of the university re attendance but contends that this is not an argument which is readily sustainable because any Appellant must understand the requirements to attend courses. Further he submits that if employment is taken after leave has been curtailed, then the balance falls in the Appellant's favour in any Article 8 assessment and that the case would have to be totally compelling to succeed. He submits that this case did not fall within that criteria.

8. Mr Karim opens by submitting that the analysis of the Secretary of State is mere disagreement and that the Secretary of State must establish that the judge's decision was perverse and that this is a very high threshold. He relies on the guidance given in *Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 (IAC)*.

9. He submits that the judge has directed himself properly. He takes me through the decision of the First-tier Tribunal Judge. He points out that paragraph 2 sets out the history and that the judge was aware that the Appellant's leave had been curtailed. He emphasises the difference between curtailment of leave and cancellation of leave in that curtailment means that leave remains until the date of curtailment. Therefore any application made is in time pursuant to Section 3(C) of the 1971 Immigration Act and therefore leave continues during the period of dependency of the "3(C) leave". He submits that there has consequently been a failure by the Secretary of State to show that any work carried out by the Appellant was illegal.

10. He notes the evidence in particular paragraphs 9 and 10 and the exceptional circumstances of this case, emphasising the judge was aware as to the reason why the Appellant's attendance dropped and her application to the Home Office for an extension for leave to find another college or university to enable her to continue and complete her Masters degree in nursing. The judge had noted at paragraph 10 that the Appellant had every intention of completing her course but that this would only be possible if she was given an opportunity to find another college, and that since September 2014 she had been working as a carer dealing with people with dementia and old age and that the Appellant had been

advised that there was a shortage of qualified nurses in the UK and that they were on "the shortage occupation list" of the Home Office.

11. He emphasised as the exceptional circumstances that the Appellant was supported by Dr Khan who had made a statement and was present at court and gave evidence with regard to the Appellant's value to the community and that it was pointed out that if the Appellant obtained her qualification it would be a management qualification at level 4 confirming she was highly skilled. At paragraph 10 the judge notes the evidence of Dr Khan and the benefit that would accrue to the general public through the Appellant being allowed to remain in the UK.

12. He points out that at paragraph 12 the judge commences his findings, that the judge has looked at the authorities and reminded himself that Article 8 is not a general dispensing power and, as decided in *Patel and Others [2013] UKSC 72*, Article 8 must be related to private or family life and not education as such, and that the opportunity for a promising student to complete their course in this country, however desirable in general terms, was not in itself a right protected under Article 8. He points out the findings made by the judge at paragraphs 24 and 25 and that the decision is reasoned and set out at paragraph 26. He submits that there is no material error of law in the decision of the First-tier Tribunal Judge and he asks me to dismiss the Secretary of State's appeal.

The Law

13. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

14. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Case Law

15. I am referred to the decision in *Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 (IAC)*. That case is authority for the following propositions:

    (1) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.

    (2) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant country guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

Findings

16. This is a well reasoned decision. It is true that the Appellant is not free of blame. She is highly qualified and came to the UK to pursue an MSc in nursing at the University of Worcester. She was late in attending her course by some three days as a result of difficulties in entering the UK. She missed some classes and did not provide a GP letter confirming her illness. As a result of missing classes her leave was curtailed. To a certain extent therefore, albeit that these were matters that were heard by the First-tier Tribunal Judge, the first Appellant is the author of her own misfortune.

17. However the judge has taken all this into account. He has set out in considerable detail at paragraphs 9 and 10 the facts of this matter and has taken into account the supportive evidence of Dr Khan. Thereafter the judge has gone on to make findings. He has considered the law generally under Article 8 and given due and proper consideration to the authorities of *Patel and Others* and *JK (India) [2013] EWCA Civ 1080* and has noted at paragraph 18 the very significant obstacle for students in the UK to argue that removal decisions will engage Article 8 in the first place, albeit that he notes that it is not an impossible hurdle. It is fair to say therefore that the judge has given very detailed consideration to the law and that his approach to Article 8 is not one that shows any material error of law.

18. Having analysed the law and quite properly addressed it, the judge has then gone on to consider the facts of this case and has made findings at paragraphs 24 and 25 which he was entitled to. He took into account the significant evidence of Dr Khan and Dr Khan's note that there was a severe shortage of qualified nurses in the UK and that the Appellant, who had already obtained a qualification in India would, on qualifying in the UK, be able to perform a valuable service to the community at a relatively high management level. Having considered all the evidence the judge made findings at paragraph 26 that the Appellant had at all times been a genuine student and that for reasons that were not necessarily all her own

fault she was never able to really start her course successfully. Consequently he concluded that this is a student who had not set out to evade immigration law (and indeed I do not think that is actually contended by Mr Tarlow) and that the cogent evidence as to her prospective value to the UK taken with all other factors persuaded him that it was not in the interests of immigration control to remove her. Those were findings that the judge was entitled to make and he has set out the basis upon which he has reached such findings in a very clear and straightforward manner and to challenge them on that basis amounts to little more than disagreement by the Secretary of State.

19. There does remain the contention that the Appellant was working and I am referred by Mr Tarlow of the right to work by a Tier 4 PBS migrant set out at paragraph 4 of the Grounds of Appeal. However the whole history of this matter has been considered by the judge and he has exercised full and proper judicial discretion including full consideration of the position with regard to the employment undertaken by the Appellant. It is not for the Upper Tribunal to go behind the findings of a judge where the fact-finding process cannot be criticised and there has been no misdirection in law. That I am satisfied is the position in this instant case.

20. Consequently I find that there is no material error of law and the appeal of the Secretary of State is dismissed. This of course is not the end of the matter so far as the Appellant is concerned. She still does not have the higher level qualification in nursing that she sought to achieve. It will of course be incumbent upon her now to ensure that steps are taken for her presumably to follow the relevant course and to obtain the qualification that she originally set out for. That is not a matter for consideration by this Tribunal.

Notice of Decision

The decision of the First-tier Tribunal discloses no material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal is maintained.

No anonymity direction is made.

Signed Date **27th July 2016**

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed Date **27th July 2016**

Deputy Upper Tribunal Judge D N Harris