



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/21479/2012

THE IMMIGRATION ACTS

Heard at : Field House
On : 24 February 2014

Determination Promulgated
On : 27 February 2014

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SRINIVASA RAO POKURI

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. Mr Pokuri is a citizen of India born on 16 April 1980. Although this is the Secretary of State's appeal, it is convenient to refer to Mr Pokuri 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 he secured a

decision in his favour in the Upper Tribunal in respect of his unsuccessful appeal against the decision of the Secretary of State to refuse his 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 are that he entered the United Kingdom on 1 July 2010 with entry clearance as a Tier 4 (General) Student until 29 November 2011 and was subsequently granted leave to remain on the same basis until 31 July 2012. He applied, on 2 April 2012, for further leave to remain as a Tier 1 (Post-Study Work) Migrant under the Points Based System. His application was refused on 28 September 2012 on the basis that he was unable to meet the requirements of Appendix A of the Immigration Rules. He was awarded zero points for the date of his award as he had failed to show that he had been awarded his eligible qualification, an MA in Marketing and Innovation from Anglia Ruskin University, no more than twelve months before the date of his application. That in turn led to the award of zero points for English language under Appendix B. His application was accordingly refused under paragraphs 245FD(c) and 245FD(d) of HC 395 and a decision was made to remove him 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 5 December 2012. The First-tier Tribunal Judge found that he was unable to meet the requirements of the immigration rules since he had been awarded his degree in July 2012 and had thus not obtained the relevant qualification at the time he made his application in April 2012 as the rules required. The judge, however, allowed the appeal against the section 47 removal decision on the limited basis that it was not 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 his absence. I heard from Mr Jack who submitted that the appeal had been correctly refused under the immigration rules, relying on the decisions in Raju and Nasim. 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. Article 8 was not raised before the First-tier Tribunal.

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 him. 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 Deputy Upper Tribunal Judge Chana of 8 May 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 Dove and the appellant's grounds of appeal relating to that decision. Judge Dove found that the appellant did not meet the requirements of the immigration rules and set out his reasons in some detail at paragraphs 13 to 15 of his determination. There is no error of law in his decision in that regard. The evidence is that the appellant was awarded his degree by the Anglia Ruskin University on 6 July 2012, that plainly being the relevant date as was made clear in Nasim 1. His application for leave to remain was made on 2 April 2012, prior to the award of his degree, and accordingly, following the principles in Raju and Nasim 1, he could not meet the requirements of the immigration rules.

9. The grounds of appeal challenging the judge's decision raise the issue of fairness and the evidential flexibility policy, but such challenges were effectively rejected in Nasim 1 at paragraphs 38 to 52. The grounds also refer to Article 8 of the ECHR but there was no indication in the grounds before the First-tier Tribunal that Article 8 was relied upon. There was no reference to any established private life in the appellant's statement and there was no evidence of such in the documentation before the judge. Accordingly, even if the judge ought, despite the absence of any such grounds, to have gone on to consider Article 8, there was no evidence before him to indicate that the appellant had established a private life capable of giving rise to a breach of Article 8 in the event of his removal from the United Kingdom. The appellant had, at that time, been in the United Kingdom for two years and four months and had completed the studies for which he had applied for permission to reside in the country. There was no indication of any family life established here and there was no evidence of the family life referred to in the grounds before the Upper Tribunal. In view of the observations 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, the appellant could not, and indeed could not now, succeed on Article 8 grounds.

10. In the circumstances, I find no error of law in the judge's decision and consider that he properly dismissed the appeal against the decision to refuse to vary leave whilst allowing the appeal against the removal decision on the basis that it was not in accordance with the law.

DECISION

11. I set aside the determination of Deputy Upper Tribunal Judge Chana and substitute a decision on the following basis:

12. 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: