



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: IA/09894/2014
IA/09899/2014

THE IMMIGRATION ACTS

Heard at Field House

On 28 January 2015

**Decision & Reasons
Promulgated
On 5 February 2015**

Before

**THE HONOURABLE MR JUSTICE GOSS
UPPER TRIBUNAL JUDGE O'CONNOR**

Between

**MR NAZRUL ISLAM (FIRST APPELLANT)
MRS AFROZA AKTER (SECOND APPELLANT)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr M Bhuiyan, Universal Solicitors

For the Respondent: Mr S Walker, Senior Presenting Officer

DECISION AND REASONS

Delivered orally on 28 January 2015

1. The appellants are citizens of Bangladesh and are husband and wife. On 29 November 2013 the first appellant made an application for leave to remain in this country as a Tier 4 (General) Student Migrant (a PhD student at Southbank University). The second appellant made an application on the same date as a dependent partner of the first appellant. There is no dispute that the second appellant's appeal stands or falls with that of the first appellant.
2. The Secretary of State refused both appellants' applications for leave to remain in decisions of 4 February 2014, making decisions to remove them pursuant to Section 47 of the Immigration, Asylum and Nationality Act 2006 at the same time. The appellants appealed these decisions to the

First-tier Tribunal and in a determination promulgated on 9 October 2014 First-tier Tribunal Judge Cockrill dismissed such appeals, concluding (i) that the appellants did not meet the requirements of the Immigration Rules and (ii) that their removal would not breach Article 8 of the Human Rights Convention.

3. The appellants were granted permission to appeal to the Upper Tribunal by First-tier Tribunal Judge Hollingworth in a decision of 26 November 2014 and thus the matter came before us.
4. The pleaded grounds are succinct. Paragraphs 3 and 7 of the grounds assert that the First-tier Tribunal's decision was not in accordance with the Immigration Rules; however, neither ground particularises why this is said to be so and which Rule it is asserted that the appellants meet.
5. At the hearing Mr Bhuiyan quite properly withdrew reliance on these paragraphs of the grounds. I say 'properly' because the First-tier Tribunal considered the issue of whether the Immigration Rules were met in paragraphs 46 and 47 of its determination, concluding (i) that the production of a CAS to the Secretary of State with the application was a mandatory requirement of the Immigration Rules and (ii) that the first appellant did not produce a valid CAS with his application. The First-tier Tribunal was undoubtedly correct in both of these conclusions.
6. For the sake of completeness we also observe that there is no part of paragraph 276ADE of the Rules which on the facts as presented by the appellants is capable of operating in their favour.
7. The appellant's challenge before the Upper Tribunal turns then on the First-tier Tribunal's consideration of Article 8 of the Human Rights Convention outside of the Immigration Rules.
8. Contrary to Mr Bhuiyan's submissions, the First-tier Tribunal identified the relevant factual matrix, including the appellants' unblemished immigration history and the length of time that they had spent in the United Kingdom, and took this factual matrix into account when coming to its conclusions. This is clear in our view from paragraph 40 of the determination, which immediately follows the heading "My findings and reasons". Paragraph 40 refers back to the Tribunal's earlier recitation of the appellants' immigration history, which was comprehensively set out in paragraphs 4 and 5 of the determination. It is inconceivable in our view that having directed itself in this regard in paragraph 40 of the determination the Tribunal did not thereafter take such matters into account when coming to its conclusions on the Article 8 ECHR ground.
9. The Tribunal also took into account (i) the first appellant's excellent academic record [41, 54 and 56], (ii) how it came to be that the appellants were unable to meet the requirements of the Immigration Rules and that this was through no fault of their own [43-45, 48 and 52-53] and (iii) that

save for the failure to produce a CAS the appellants would have met the requirements of the Rules [43 and 56].

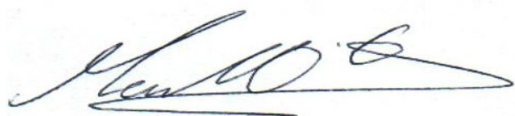
10. Further, in paragraph 55 of the determination the First-tier Tribunal directs itself to Section 117 of the Immigration Act, by which it was clearly referring to section 117 of the Nationality, Immigration and Asylum Act 2002, as introduced by Section 19 of the 2014 Act. Although in granting permission Judge Hollingworth thought it arguable that the First-tier Tribunal had failed to provide proper reasons in relation to its consideration of Section 117, we do not accept that this is so. There is nothing in section 117 which is capable of materially operating to the benefit of the appellants in this case and at the hearing before us Mr Bhuiyan confirmed that no such point had been taken before the First-tier Tribunal.
11. Having taken into account all of these material factors and whilst expressing sympathies for the position the appellants have found themselves in (as we do), the First-tier Tribunal came to a conclusion which in our view it was unarguably entitled to come to. Contrary to that submitted in the grounds, neither the Tribunal's reasoning nor its conclusions are inconsistent with the *ratio* of Mr Justice Sales' decision in Nagre [2013] EWHC 720.
12. We conclude, for the reasons given above, that the First-tier Tribunal's determination does not contain an error on a point of law capable of affecting the outcome of the appeal and its decision is to remain standing.

Notice of Decision

The decision of the First-tier Tribunal does not contain an error on a point of law capable of affecting the outcome of the appeal and it is to remain standing.

No anonymity direction is made.

Signed:



Upper Tribunal Judge O'Connor
Date: 3 February 2015