



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

Appeal Numbers: IA039032013
IA039092013

THE IMMIGRATION ACTS

Heard at Field House

On 9th May 2016

**Decision &
Promulgated
On 25th May 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MISS SWETA DUTT
MR IMRAN MOHAMMED KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Vaughan, instructed by Sky Solicitors

For the Respondent: Mr J Parkinson, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appeal, with permission granted by Upper Tribunal Judge Grubb, against a decision of the First-tier Tribunal, that is Designated Judge Campbell and First-Tier Tribunal Judge Bird to dismiss their appeals

on human rights grounds, specifically Article 8 of the European Convention on Human Rights.

2. The permission was granted on the following basis:

“The grounds raise an arguable error of law in the FtT’s approach to the public interest under Article 8 in the light of the fact that the first appellant believed (wrongly as it turned out) that she was engaged in bona fide study at her educational institution (Kensington College of Business).”

3. The essential facts of the appellant’s case is that on 4th April 2012 the first appellant made a combined application for leave to remain in the United Kingdom as a Tier 1 (Post-Study Work) Migrant under the points-based system. She had previously been granted leave to enter the United Kingdom on a visa valid from 13th July 2007 until 30th September 2009 and on 2nd December 2009 she was granted leave to remain as a Tier 4 (General) Migrant until 4th December 2011. Her application for leave to remain was refused on 14th January 2013 under paragraph 322(1A) and paragraphs 245FD(a) and 245FD(c) and 245FD(d) of the Immigration Rules.
4. The second appellant applied as the first appellant’s dependent and his application was refused, on 14th January 2013, as a consequence of the decision in relation to the first appellant.
5. A decision was also made under Section 47 of the Immigration, Asylum and Nationality Act 2006 to remove the appellant. It is from this decision that the rights of appeal flow.
6. The reasons for refusal letter identified that the appellant had provided a letter purporting to be from Kensington College of Business dated 27th January 2012 in support of her application. Following enquiries with an official employee at Kensington College of Business it was established that the document in question was not genuine. Thus the Secretary of State was not satisfied she had provided the specified documents required under Appendix A of the Immigration Rules. In view of the fact that she failed to obtain the relevant points under Appendix A and she was also awarded no points in relation to Appendices B and C.
7. The background history is that the appellant had enrolled on an MBA top-up course at the London Graduate School (LGS) and states that she was told that the enrolment was on the basis that the course was run via the Kensington College of Business (KCB) leading to an MBA awarded by the University of Wales. Upon successful completion of the course KCB gave the appellant a certificate and other documents ostensibly confirming this, but it was found as a result of ‘administrative chaos’ at the college that the appellant was not properly registered at LGS, KCB or with the University of Wales and therefore did not obtain the MBA qualification and could not satisfy the Immigration Rule requirements.

8. The First-tier Tribunal in its decision set out the following at paragraphs 30, 31 and 32:

“30. We heard submissions from Mr Vaughan on the administrative arrangements at LGS and KCB which were accepted as being chaotic. This was supported by the evidence we heard from Dr Bakht and Professor Howard. Mr Vaughan submitted that it was far more likely that neither the appellant nor any other individual produced false documents or made false statements. Instead the documents produced were in good faith, albeit chaotically, and they could not be matched with records maintained at KCB or LGS because no reliable or accurate records were maintained to enable a comparison to be made.

31. From the evidence that we have heard and seen it is apparent that the appellant was never properly or formally enrolled at LGS or at KCB or the University of Wales. Her dealings were entirely with LGS. She attended classes there and paid her fees and submitted assignments and a dissertation there. The appellant was however aware from information given to her by Dr Bakht that there was an agreement between KCB and LGS whereby students from LGS would be able to study the programme at LGS but would be awarded a formal certificate of qualification by KCB which was affiliated with the University of Wales.

32. It is accepted that the appellant was unable to produce any evidence of receipts issued to her following payment of fees. We have heard evidence in similar appeals of a similar lack of receipts being issued on payment of fees. We are prepared to accept that the lack of proper administration, the number of students who attended the course and the short duration of the course led to students not being properly registered. Dr Bakht in his evidence accepted that things could have been better managed.”

9. In conclusion the Tribunal found that weighing up all the evidence before it, dishonesty or deception had not been shown and there was nothing to displace the rival theory that the documents relied on by the appellant were the product of maladministration at LGS and/or at KCB. The First-Tier Tribunal found the ground of refusal under paragraph 322(1A) of the Rules had not been made out in this case.

10. The First-tier Tribunal, however, regarding the appeal under the Rules went on to say as follows:

“37. So far as the second issue is concerned, the appellant received documents generated by or produced by KCB purporting to record academic achievements, but there was no reliable evidence of completed enrolment at KCB, University of Wales or at LGS and no evidence – notwithstanding the passage of time –

from the University of Wales or any other body confirming that the appellant was entitled to the MBA Degree. Indeed, the only evidence from the University of Wales shows that the appellant was never enrolled there and therefore was not entitled to the Diploma Supplement from the University of Wales.

38. *The documents that the appellant has submitted therefore fall far short of showing that she was entitled to the points claimed in the attributes category. Even without regard to Mr Stagg's e-mail upon which the respondent relies, the evidence does not show that the appellant has ever been awarded the qualification she required to succeed in the Tier 1 (Post-Study Work) application. The Secretary of State's decision to refuse the appellant under paragraph 245FD must stand."*

11. The Tribunal then turned to Article 8 and it is here that Mr Vaughan submits that the Tribunal proceeded to make the legal errors and in particular failed to apply the relevant considerations in relation to the proportionality test of Article 8 and erred in its approach to the weight given to the public interest. He submitted that the panel's reasoning was that the appellant was prevented from being awarded the MBA degree by the University of Wales essentially because of the failure by the administration at KCB to register her with the university. The panel's factual findings summarised that she was not awarded the MBA for reasons wholly extraneous to the appellant. It was submitted this was a highly relevant factor to the question of whether grant of leave to remain on the basis of Article 8 would undermine the state's interest in maintaining effective immigration control and this did not feature at all in the panel's analysis. But for the negligence of LGS/KCB the appellant would have succeeded under the Rules but **Patel and Others v Secretary of State for the Home Department [2013] UKSC 72** according to Mr Vaughan tells us nothing about how negligence/fraud factor operates under Article 8(2).
12. At the hearing before me Mr Vaughan developed his argument further than that in the permission to appeal and put the case on the grounds that the First-tier Tribunal panel had failed for the purposes of the proportionality balancing exercise in quantifying the legitimate aim of maintaining effective immigration control and (i) to take into account or give reasons for rejecting the fact that it was the college's fault the appellant had not registered with the University of Wales and therefore the college's fault they failed to secure the qualification and (ii) to make the necessary findings as to the degree of responsibility on the part of the Home Office for the administrative chaos at KCB in late 2011 which lay at the root of the appellant's unsuccessful applications. A further point was made as to whether the submissions were precluded by the 'near-miss' line of authority.
13. Mr Vaughan referred to the decision by Upper Tribunal Judges Rintoul and Frances but as he confirmed this is not a reported decision and I am not

bound by it. The Upper Tribunal in that appeal held that his arguments before them in relation to the case of **Ali** were predicated on an assumption that the Secretary of State had a duty of care but there was no such duty of care and there was not sufficient evidence for the Tribunal to find for the First-tier Tribunal to enable them to conclude that the respondent was at fault in failing to regulate KCB. The UT Tribunal pointed out, in that case that suspension of the college's licence would have prevented the MBA being awarded and they would be in the same place and the appellants were not in the same position as **OA (Nigeria) v SSHD [2008] EWCA Civ 82.**

14. Mr Vaughan stated that he had not submitted that there was any duty of care and no such duty was necessary to found an argument that the respondent's behaviour was plainly relevant to the extent to which public interest required removal.
15. The issue for the First-tier Tribunal was whether there was any wrongdoing on the part of the Secretary of State for the Home Department. It was submitted that it was not whether there was such wrongdoing but to decide whether the issue was analysed properly by the First-tier Tribunal. It was submitted that there was serious negligence and possibly fraud by a Home Office accredited Tier 4 sponsor, that being KCB, and Dr Bakht who was the course tutor at KCB and who was subject to police bail following his arrest on suspicion of fraud and the outcome of those police investigations were not known. Nor was it known whether there were any prosecutions resulting from the problems with the MBA top-up course.
16. Secondly the state of affairs arose notwithstanding that at all material times the Home Office continued to maintain KCB as a Tier 4 accredited sponsor. That college remained on the Home Office sponsor list despite being referred to as having "administrative chaos" at KCB and LGS. There was an unannounced inspection on 6th December 2012 in relation to KCB at which it was observed that the sponsor had not kept sufficient records. Dr Bakht was questioned on 5th February 2013 about the MBA top-up course. In conclusion it was submitted that the Home Office had failed to regulate KCB properly.
17. In sum it was submitted that the appellants did not qualify under the relevant private life Rule 276ADE but a full Article 8 assessment was required on the basis of the structured approach set out in **Razgar v SSHD [2004] UKHL 27.** The key factor not considered was the college and the Home Office failures and as such non-compliance with the Rule was not determinative of the Article 8 issue and was not a weighty factor, **Izuazu.** This was not a "near miss" and should have not been rejected in accordance with **Patel.** First, **Patel** did not deal with the impact of wrongdoing by the college and secondly the authorities in the present context dealing with wrongdoing by third parties support the relevance that a factor for the proportionality assessment **OA (Nigeria) v Secretary of State for the Home Department [2008] EWCA Civ 82.**

In that case the wrongdoing in the form of fraud by a legal representative was relevant and that the Tribunal was entitled to find that removal of **OA** partway through her course would be disproportionate. Thirdly the extent to which the panel referred to the absence of fault on the part of the Home Office was clearly insufficient to dispose of the central dispute. Fourth, as stated in **SS Congo v SSHD [2015] EWCA Civ 317** by Richards LJ, if an applicant can show there are individual interests at stake covered by Article 8 which give rise to a strong claim that compelling circumstances may exist, the fact that their case is a near miss may be a relevant consideration which tips the balance under Article 8 in their favour and:

“In such a case the applicant will be able to say that the detrimental impact on the public interest in issue if LTE is granted in their favour will be somewhat less than in a case where the gap between the applicant’s position and the requirements of the Rules is great.”

18. At the hearing before me Mr Vaughan took me through the transcript which is attached to the First-tier Tribunal decision referring to the evidence taken from the witnesses in relation to KCB and LGS. He submitted from the evidence the Home Office must have been aware of serious issues and yet had allowed KCB to remain on the register and indeed it remained on the register as at June 2015. He also confirmed that the appellant enrolled at LGS and believed that she was enrolled at KCB. The respondent was at fault in failure to regulate the colleges and the First-tier Tribunal should have made findings in that regard which would have been relevant to proportionality. He confirmed that LGS were never on the Home Office register but KCB never had any proper system. The appellant’s two witnesses had shown serious flaws in the administration of the college but this had not been addressed in the First-tier Tribunal decision.
19. Mr Vaughan acknowledged that the Home Office was not directly responsible for the appellant not being awarded the degree, but that there was a failure to regulate KCB, particularly when they could have anticipated an avalanche of applications as the Tier 1 (Post-Study) Migrant avenue to a visa was being closed. There was a broad issue here of the way the college was being administered and he referred to **OA** whereupon the Home Office had failed to identify a stamp.
20. I was also referred to **EK (Ivory Coast) [2014] EWCA Civ 1517** particularly paragraphs 38, 40, 53, 55 and 56.
21. The First-tier Tribunal had not properly looked at all the circumstances and had not adopted an appropriate approach.
22. In response Mr Parkinson pointed out that the relationship of the appellant was with LGS and not with KCB. It was clear that there were issues with the administration but nothing to suggest those issues were brought to the attention of the Secretary of State and she was not in the situation to carry out intensive ongoing monitoring. Much of the power in

that respect had been devolved to colleges and it was noted from the evidence that there was no formal written agreement between KCB and LGS and they attempted to accommodate a large number of students. The fact that KCB was a highly trusted sponsor did not mean that it was not capable to fail to meet administrative requirements and much of Mr Vaughan's arguments relied on hindsight and although there was *now* evidence of what was going wrong, at the time that was not necessarily the case.

23. He pointed out that when the Immigration Rules were not complied with there must be some compelling aspect of the appellant's case such as it to be considered outside the Rules. There was nothing here that was compelling. The appellant already had a postgraduate diploma. She may have lost the opportunity to work but she could re-establish herself on return to her home country. She may be disappointed but that is not the purpose of Article 8. It was not the remit of the Secretary of State to address the administrative issues of the colleges.
24. In conclusion the thrust of Mr Vaughan's application was an inadequate assessment by the First-tier Tribunal in relation to proportionality and specifically a failure to take into account that it was the college's fault for failing to register properly the appellant as a result of administrative shambles and also indirectly the responsibility of the Secretary of State for failing to monitor or regulate a college in these circumstances. The Secretary of State did not accept that there had been an error of approach by the First-Tier Tribunal.

Conclusions

25. It is quite clear that the appellant could not meet the Immigration Rules in this case and it was not a question of near miss. **Patel and Others v Secretary of State for the Home Department [2013] UKSC 72** confirmed that Article 8 was not a general dispensing Rule [paragraph 57] and that in effect the opportunity for a promising student to complete the course in this country however desirable was not a protected right under Article 8. That is the background context. I would draw an analogy with the right to work. In Ms Dutt's case the First-tier Tribunal, however, accepted that there was *some* private life albeit there was "little evidence of private life ties" [40]. In other words this case has gone beyond the point of whether there is a protected right established or not, and as per paragraph 55 of **Patel** the balance drawn by the Rules *may* be relevant to the consideration of proportionality.
26. At the outset, I note that at paragraph 36 the First-tier Tribunal in fact made clear that weighing all the evidence before it the Tribunal came to the conclusion that dishonesty or deception had not been shown and there was '*nothing to displace the rival theory*' that the documents relied on by the appellant were the product of maladministration at LGS and/or at KCB. In this way the ground of refusal under paragraph 322(1A) of the Rules had not been made out [36].

27. The Tribunal was quite clear that there was

“No reliable evidence of completed enrolment at KCB, University of Wales or at LGS and no evidence – notwithstanding the passage of time – from the University of Wales or any other body confirming that the appellant was entitled to the MBA degree.”

The Tribunal found at paragraph 38:

“38. The documents that the appellant has submitted therefore fall far short of showing that she was entitled to the points claimed in the attributes category. Even without regard to Mr Stagg’s e-mail upon which the respondent relies, the evidence does not show that the appellant has ever been awarded the qualification she required to succeed in the Tier 1 (Post-Study Work) application. The Secretary of State’s decision to refuse the appellant under paragraph 245FD must stand.”

28. The fact is that although the appellant was not found to have been dishonest she had not produced evidence that she had obtained a degree as required by the Tier 1 (Post-Study Work) requirements. As recorded at paragraph 31 of the First-Tier Tribunal decision:

“Her dealings were entirely with LGS. She attended classes there and paid her fees and submitted assignments and a dissertation there. The appellant was however aware from information given to her by Dr Bakht that there was an agreement between KCB and LGS whereby students from LGS would be able to study the programme at LGS but would be awarded a formal certificate of qualification by KCB which was affiliated with the University of Wales.”

29. I was referred by Mr Vaughan to **EK (Ivory Coast)** [2014] EWCA Civ 1517 which considers the position as with regard the general duty of fairness required. That decision was also in relation to a points-based system and has some bearing in relation to proportionality and of Article 8 and the approach to be taken specifically with regard to administrative errors. Sales LJ held in **EK** at [32] that it would be a serious intrusion upon the intended straightforward and relative automatic operation of decision-making by the Secretary of State under the PBS if in every case of withdrawal of a CAS letter she had to make inquiries and delay making a decision.

30. The thrust of the case of **EK (Ivory Coast)** was that the points-based system places the onus of ensuring that an application is supported by evidence to meet the relevant test for grant of leave to enter or remain squarely upon the applicant and the Immigration Rules give applicants fair notice of this. A particular point is that at paragraph 33 it was stated

“it is inherent in the scheme that an applicant takes the risk of administrative error on the part of a college”.

Lord Justice Sales continued at paragraph 35 to identify that it is the applicant who deals directly with the college in relation to sorting out acceptance onto the course and the certification of that fact and so has the opportunity to check the contract made with the college so far as concerns the risk of withdrawal of the CAS letter:

*“If a college withdraws a CAS letter, the applicant may have a contractual right of recourse against the college. The fact that there is scope for applicants to seek protection against administrative errors by **choosing a college with a good reputation and checking the contractual position** [my emphasis] before enrolling is of some relevance to the fair balance to be struck between the public interest in the due operation of the PBS regime and the interest of an individual who is detrimentally affected by it.”*

And indeed as stated at paragraph 35:

*“In my view, the circumstances in which the PBS applies are not such **that it would be fair**, as between the Secretary of State (representing, for these purposes, the general public interest) and the applicant, **to expect the Secretary of State to have to distort the ordinary operation of the PBS regime to protect an applicant against the speculative possibility that a college has made an administrative error in withdrawing a CAS letter**, rather than withdrawing it for reasons which do indeed indicate that no leave to enter or remain ought to be granted. The interests of applicants such as the Appellant are not so pressing and of such weight that a duty of delay and inquiry as contended for by the Appellant can be spelled out of the obligation to act fairly.”*

31. Lord Justice Sales particularly stated that he did not think it was appropriate to draw an analogy with the operation of the duty of fairness in cases in which the imposition of a penalty was in issue such as in a criminal or professional disciplinary context so far as the appellant is concerned. He drew a distinction between the importance of what was at stake such as liberty, livelihood and good name. Those are not issues which are at stake here. I can accept that the appellant wished to have the opportunity to work in the UK but she was not being deprived of her liberty or her livelihood. She was not having her right to privacy invaded.
32. As can be seen from **EK (Ivory Coast)** the maladministration of the college may not be the responsibility of the appellant but there is public interest in appellants registering and contracting with a bona fide college. The appellant on her own evidence accepts that she was never registered with KCB which still remains on the Home Office sponsor's list. The evidence which I was taken to also identifies that at paragraph 50 of the Appendix transcript of evidence “Dr Bakht had said it was correct there was no official agreement between LGS and KCB”. Any check by the student could have established this.

33. The First-Tier Tribunal established that the Secretary of State had shown, on the balance of probabilities, the appellant was not acting with deception. It was recorded that it was not the appellant's fault but the Secretary of State did not take any action such as to deprive the appellant of a degree. The college at which she attended and with which she had dealings with LGS and this college never did have any form of registration.
34. Although there was a representation that the college was being investigated for fraud and there were ongoing investigations it is clear that KCB is still on the sponsor register and there was no clear information that personnel in connection with LGS were being prosecuted for fraud. Indeed, the finding by the First-tier Tribunal Judge was that there was maladministration. The First-tier Tribunal found at [30] as recorded above that it heard evidence from Dr Bakht and Professor Howard and it was submitted that documents were produced in good faith and that neither the appellant nor any other individual produced false documents or made false statements. This appeared to have been accepted by the Tribunal [35].
35. That she was not at fault for deception does not discharge all responsibility by the appellant. There remains a responsibility with the appellant to ensure that she was enrolled with a registered college and not just rely on verbal assurance of a tutor which is what she did. It is not difficult to check whether a college is registered and it is clear that LGS, the college the appellant believed she was enrolled with was never a registered college. KCB remains a registered college but no formal agreement was ever made between KCB and LGS. A check with the University of Wales could have established no registration.
36. In the light of the reasoning above I am not persuaded that the First-tier Tribunal Judge erred in its assessment of proportionality with regard public interest and the weight to be accorded to the position of the Secretary of State in this context. It is the Immigration Rule which set out the position of the Secretary of State.
37. Turning to the claimed negligence of the Secretary of State for failing to monitor such a college, if there was no formal written agreement I am not clear how it could be said that the Secretary of State was to know that LGS was, at the time operating as it was. The Secretary of State cannot remove a college which is not registered from a Sponsor list. The purpose of the sponsor lists is that students can check them. Consideration was given in **EK (Ivory Coast)** to the decisions such as **Patel (Revocation of sponsor licence - fairness) India [2011] UKUT 0021** and **Thakur (PBS decision - common law fairness) Bangladesh [2011] UKUT 00151** where it was held that the secretary had withdrawn authorisation from a college to issue CAS letters and fairness required that she should give foreign students enrolled at the college a reasonable opportunity to find a substitute college before removing them. It was specifically stated that the students were not themselves at fault in any way but had been caught out by action taken by the Secretary of State in relation to which

they had no opportunity to protect themselves. That is not the case in this instance; indeed it is alleged that it is because the Secretary of State *did nothing, rather than act* which is the cause for added weight to be given to the appellants' case in an assessment of Article 8.

38. I was also referred to the FNU compliance report form suggesting that the Home Office had not properly regulated the college and this was evidenced from their own compliance report but I note that this was dated 14th January 2013 which post dated the application of the appellant by nine months. I do not accept that it must be the responsibility of the Home Office to give the appellant notice prior to her registering with the college of something that the Home Office had no knowledge of. Certainly there can be no evidence that the Home Office had knowledge at that point. I can appreciate that the Article 8 determination was in relation to the hearing date but the Tribunal was being asked to consider matters which had taken place by April 2012 and there was no evidence before it at that date that the administration systems were in the chaos that they were. It would appear that the respondent conducted an unannounced inspection at KCB in December 2012 but at that point LGS ceased operating.
39. I was also referred to the case of **OA (Nigeria) v SSHD [2008] EWCA Civ 82** which demonstrates that failure by the Secretary of State can be relevant in an Article 8 assessment. That may be the case but I do not accept it assists these appellants as the facts are very different. The **OA** case involved an overseas student who came to the UK as a minor to study in the United Kingdom and who engaged a right to a private life when resisting removal and the case decided whether that removal was proportionate. Her appeal was allowed on the basis that it was one of those "very rare cases" and on the basis that she had acted with all due expedition once she became aware that a solicitor who had acted for her had produced a false visa stamp. The judge found that the consequences for the appellant were that she would have her studies interrupted. What was critical in this case was that it was the Home Office who failed to confirm when asked repeatedly whether the visa stamp was genuine and it did not do so. That case not only involved fraud on the part of the solicitor and repeated failure by the Home Office but also was predicated on a wholly different factual basis.
40. In this instance there would not appear to be fault on the part of the respondent. The First-tier Tribunal cannot be criticised for failing to take into account fault on the part of the respondent when that fault is not made out.
41. **Nasim and Others (Article 8) [2014] UKUT 00025** provides insight into the approach to be taken with regards Article 8 and points based system cases, whereby it adopted a view that the essential elements of private life relied on will normally be transposable in that they can be replicated in their country of origin following a person returning home and

it is noted that **Nasim** cited **MM (Tier 1 PSW; Art 8; private life) Zimbabwe [2009] UKAIT 0037** paragraph 3:

“When determining the issue of proportionality ... it will always be important to evaluate the extent of the individual’s social ties and relationships in the UK. However a student here on a temporary basis has no expectation of a right to remain in order to further these ties and relationships if the criteria of the points-based system are not met. Also, the character of an individual’s private life relied upon is ordinarily by its very nature of a type which can be formed elsewhere, albeit through different social ties, after the individual is removed from the UK.”

42. Further at paragraphs 18 and 19:

*“18. In **R (on the application of the Countryside Alliance) v AG and others [2007] UKHL 52**, Lord Bingham, having described the concept of private life in Article 8 as “elusive”, said that:*

“... the purpose of the article is in my view clear. It is to protect the individual against intrusion by agents of the state, unless for good reason, into the private sphere within which individuals expect to be left alone to conduct their personal affairs and live their personal lives as they choose” [10].

19. It is important to bear in mind that the “good reason”, which the state must invoke is not a fixity. British citizens may enjoy friendships, employment and studies that are in all essential respects the same as those enjoyed by persons here who are subject to such controls. The fact that the government cannot arbitrarily interfere with a British citizen’s enjoyment of those things, replicable though they may be, and that, in practice, interference is likely to be justified only by strong reasons, such as imprisonment for a criminal offence, cannot be used to restrict the government’s ability to rely on the enforcement of immigration controls as a reason for interfering with friendships, employment and studies enjoyed by a person who is subject to immigration controls.”

43. I would note that the First-tier Tribunal identified that the threshold to engage article 8(1) is not particularly high (see **VW (Uganda) v SSHD [2009] EWCA Civ 5**) and thus the strength of the integration limited when considering the balancing exercise in Article 8 [40]. Indeed when students apply for visas to come to the UK they are aware that their visas are temporary, their status is precarious and they are expected to return to their home country. The panel identified the relevant factors noted that any ties formed in the UK had been so formed whilst the first appellant was a student with limited leave and that her husband was at all times dependent on her [40].

44. Contrary to the submissions by counsel, the First-tier Tribunal was aware of the circumstances in which the appellants failed to have their leave extended and noted that it was not through fault of the first appellant. This was taken into account. At [41] the First-tier Tribunal noted that the appellant had lost a work experience opportunity but identified it would be only for a limited period of time and that the appellants would have little difficulty in re-establishing themselves on return to their own country where they have family and other contacts. They could maintain contact with friends here and it was noted the first appellant had obtained qualifications which would be of benefit. The appeal was not treated merely as a 'near miss' and merely and the First-tier Tribunal did not just follow Patel, as alleged, but considered proportionality having regard to the relevant factors.
45. Although not part of the decision of the First-Tier Tribunal it should be pointed out that the appellants made their applications on 11th April 2012 for leave to remain outside the period of validity of their visas. The appellants did not have valid immigration status at the date of their applications which would indeed increase the weight afforded to the Secretary of State's position. That was a point not taken by the First-tier Tribunal which in fact is to the advantage of the appellant. When the appellants established their private life it was not unlawful but by date of the application it was.
46. Applying Section 117 B
- (4) Little weight should be given to—**
(a) a private life, or
(b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.
47. In **Deelah and others (section 117B - ambit)** [2015] UKUT 00515 (IAC) the UT, consisting of a Presidential panel, confirmed that (iii) A private life "established", in the wording and in the context of section 117B(4) and (5) of the 2002 Act, is not to be construed as confined to the initiation, or creation, of the private life in question but *extends to its continuation or development*.
48. Although I have expanded upon the thinking behind the reasoning of the First-Tier Tribunal, the First-Tier Tribunal Judges took into account the relevant factors and approached the public interest question correctly giving appropriate weight to the relevant factors. I am not persuaded in this instance that the First-Tier Tribunal erred in the weight given to the public interest when assessing proportionality for the reasons given above.
49. I am not persuaded that the First-tier Tribunal made a material error of law and the First-Tier Tribunal decision shall stand.

No anonymity direction is made.

Signed

Date 24th May 2016

Deputy Upper Tribunal Judge Rimington