



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/41736/2014**

Appeal Number:

734/2014

IA/41

731/2014

IA/41

THE IMMIGRATION ACTS

**Heard at: Field House
On: 19 February 2016**

**Decision and Reasons
Promulgated
On: 30 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**MR HIRA PUN PURJA
HIRA PUN
SION PUN PURJA
(NO ANONYMITY DIRECTIONS MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Puar of Counsel
For the Respondent: Mr L Tarlow, Senior Presenting Officer

DECISION AND REASONS

1. The appellants who are a family and nationals of Nepal, appeal to the First-tier Tribunal was against the decisions of the respondent dated 3 October 2014 to refuse the first appellant's and his dependents applications for leave to remain as a Tier 2 (General) Migrant, under paragraph 245 HD of the Immigration Rules.

2. First-tier Tribunal Miles dismissed all the appellants' appeals in a decision dated 14 May 2015. First-tier Tribunal Judge, Coyler refused permission to appeal but subsequently Deputy Upper Tribunal Judge Archer in a decision dated 12 October 2015 granted the appellant permission to appeal to the Upper Tribunal, it being found to be arguable that the First-tier Tribunal Judge erred when he found that there is no breach of Article 8 in relation to the appellant's family lives but failed to consider the private lives of the appellants, as it was raised in the grounds of appeal.
3. Thus the appeal came before me.

First-tier Tribunal's Findings

4. The First-tier Tribunal made the following findings which I summarise. The appellants are citizens of Nepal and as the second and third appellant's appeals are dependent on that of the first appellant, therefore the first appellant's appeal will be considered and he will be referred to as, the appellant.
5. The appellant has not provided a valid certificate of sponsorship reference number and there was no record to show that he had been assigned such a certificate at the time of his application. On that basis, no points could be awarded under Appendix A of the Immigration Rules although it was accepted that the application satisfied the requirements of appendix B and appendix C. Accordingly therefore, the application was refused on the grounds specified, from which it followed that the applications of his wife and son also could not succeed.
6. There is no interference with family life which they currently enjoy together in the United Kingdom. The effect of the decision will be to enable them to enjoy their family life in their country of nationality. Accordingly, the decision is not in breach of the rights of the appellant and his wife and son under Article 8 of the European Convention on Human Rights and it follows from all these findings therefore that the appeals fail on all grounds.

The grounds of appeal

7. The appellant in his grounds of appeal states the following which I summarise. He was given the false assurance by his employer that he will be issued with a new sponsorship licence as soon as they were allocated by the respondent. The respondent by not providing it, is beyond his control. He tried his utmost to find a new sponsor to regularise his stay in the United Kingdom but unfortunately his sponsor failed to consider his situation and was unable to provide him with this licence on the due date. Further to that, he is currently experiencing a very uncertain situation in terms of his family and day-to-day life. Therefore, the circumstances under

which he has been going through our compelling enough to use the discretion by the Tribunal in his favour.

8. In relation to Article 8 the First-tier Tribunal failed to consider his private life and family life which he has established in the United Kingdom for the last six years. There are number of factors to be considered in his favour. Since his arrival he is very much closely associated with his Society and has made many friends who are very much involved in his day-to-day activities and also with the social life. The First-tier Tribunal failed to consider his family life as he has a wife and their three-year-old baby who accompanied him to the United Kingdom. Furthermore, he is of good character, has resided lawfully in the United Kingdom and has supported himself financially. He will contribute to the United Kingdom economy. There are various compelling factors which already exist in his favour such as completion of his degree, close ties with the Society and his family who lives in the United Kingdom.

Rule 24 Response

9. The Rule 24 response by the respondent states that the First-tier Tribunal made no error of law because he dealt with Article 8 in paragraph 13 and found that the appellant has been in the United Kingdom for a limited time and that the appellant would leave the United Kingdom as a family unit.

The hearing

10. I heard submissions from both parties as to whether there is an error of law in the determination of the First-tier Tribunal, the full notes of which are in my Record of Proceedings.

Decision on the error of law

11. There is no dispute that the appellant does not meet the requirements of the Immigration Rules. I accept that the Judge in the determination did not specifically consider the appellant's private life. In respect of family life, the Judge found that the appellant would be returned to Nepal with his wife and child to continue his family life in that country. The appellant complains that the Judge did not take into account his private life in the United Kingdom and the permission Judge found that as the appellant raised private life in his grounds of appeal, this should have been considered.
12. It was made clear in **Gulshan [2013] UKUT00640 (IAC)** that the Article 8 assessment shall only be carried out where there are compelling circumstances not recognised by the Immigration Rules. The Judge in his determination considered that the appellant's circumstances fully. At paragraph 8 he sets out that the appellant entered the United Kingdom in October 2009 valid leave as a student until 18 April 2011. He was granted

further leave in that capacity until 30 August 2012 and then as a Tier 1 Post Study Migrant until 10 September 2014. On 9 September 2014 he made an application and identified his wife and minor child, a son, as dependents. It is implicit that these facts alerted the Judge to the fact that the appellant's immigration status in the United Kingdom has always been precarious and any private life established will carry very little weight.

13. The Judge having made his findings that the appellant has not meet the requirements of the Immigration Rules, was entitled not to consider the appellant's case under Article 8, in respect of his and his family's private life.
14. From the determination, there seem to be no factors put forward by the appellant as to why his private life, in the six years that he has been in the United Kingdom, should be respected. The appellant has not identified in his grounds of appeal as to why his circumstances are so unusual that they amount to compelling and exceptional circumstances to be considered granting him and his family leave to remain outside the Immigration Rules and in respect of their private lives in this country.
15. The appellant has said that his private life consists of his friends, Society and his social activities in the United Kingdom. He also says he has some family in this country. None of these amount factors to exceptional or compelling circumstances that he should be granted leave to remain pursuant to Article 8 when he cannot meet the requirements of the Immigration Rules which are Article 8 compliant. There is no gap that requires consideration, between where the Immigration Rules end and Article 8 begins.
16. In the case of **PD and Others (Article 8 - conjoined family claims) Sri Lanka [2016] UKUT 00108 (IAC)** it was stated that "the general principle in Article 8 ECHR cases it is appropriate for the decision maker and, on appeal, the Tribunal to consider first whether the person's claim satisfies the relevant requirements of the Rules: The **Bossade** principle refers and see also paragraph 1.1 of the IDI (supra). We are further satisfied that the approach which we favour finds support in the decision in **EV (Philippines) v Secretary of State for the Home Department [2014] EWCA Civ 874**. We refer particularly to the connection between children and parents which Christopher Clarke LJ made in [33]. The Court of Appeal found that the overall conclusion of the tribunal judge which was, in substance, that it was reasonable to expect the three children concerned to continue to live with their parents and that all should return together to their country of origin, with the public interest in the maintenance of firm immigration control prevailing, was sustainable in law. In the language of Lewison LJ, to remain with their parents was "obviously" in their best interest: [60].

17. Having considered the determination as a whole I conclude that the Judge has not erred in law in his evaluation of the appellant's appeal pursuant to Article 8. The appellant does not meet the requirements of the Immigration Rules which are Article 8 compliant and no differently constituted Tribunal would come to a different conclusion on the facts in this case.
18. I therefore uphold the decision of the first-tier Tribunal as I find there is no material error of law.

DECISION

Appeals dismissed for all the appellants.

Signed by

Mrs S Chana
A Deputy Judge of the Upper Tribunal

28th day of March 2016