



IAC-FH-AR-V1

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

Appeal Numbers: IA/47294/2014
IA/47303/2014
IA/47310/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 9 December 2015**

**Decision & Reasons Promulgated
On 7 January 2016**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

**HARPREET KAUR BOPARAI
HARPREET SINGH BOPARAI
JEEWANJOT SINGH BOPARAI**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss S Pinder, Counsel, instructed by Theva Solicitors

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

Background

1. The first appellant, Mrs Harpreet Kaur Boparai is the main appellant and her husband and son were dependants on her application for further leave to remain as a Tier 4 (General) Student Migrant. Mrs Boparai applied for further leave to remain to study towards a postgraduate diploma in health

and social care management at Meridian Business School. The course was due to start on 13 October 2014 and was expected to end on 13 October 2015.

2. The respondent refused her application for further leave to remain on the ground that the specified evidence she produced in support of the application was not of the right type to meet the requirements of paragraph 13 of Appendix C of the Immigration Rules. Mrs Boparai produced bank statements as evidence to show that she met the maintenance requirements of the Immigration Rules and there is no dispute that the amounts shown in those bank statements were at a sufficiently level to meet the requirements. However, the application was refused because the bank statements were not in her name but in her husband's name. As such the evidence did not meet the requirements of paragraph 13 of Appendix C of the Immigration Rules.
3. The appellant appealed against the respondent's decision to refuse leave to remain. The appeal was heard by First-tier Tribunal Judge Buckwell on 9 June 2015. He dismissed the appeal in a decision promulgated on 3 July 2015. At paragraph 10 the judge noted that the appellant's representative conceded that she could not meet the strict requirements of the Immigration Rules and the case was argued under Article 8 of the European Convention on Human Rights outside the Immigration Rules.
4. In paragraphs 11 to 16 the judge set out the evidence given by the appellant. Later in his decision it is quite clear that he accepted that it had been an innocent mistake. She misunderstood the requirements of the Immigration Rules for the funds to be in an account in her own name.
5. In paragraphs 29 to 31 of the decision the judge set out the legal framework relating to the assessment of Article 8 outside the Immigration Rules. His summary of the relevant case law is correct. He went on to make his findings in paragraphs 34 to 36 of the decision. In paragraph 34 he correctly stated that he needed to follow the five stage approach outlined by the House of Lords in *R v SSHD ex parte Razgar* [2004] 3 WLR 58. In making the assessment he also directed himself to the case of *Patel & Others v SSHD* [2013] UKSC 72, and in particular to the comments made by Lord Carnwath, which admittedly are *obiter* to the central issues in the case:

“It is important to remember that Article 8 is not a general dispensing power. It is to be distinguished from the Secretary of State's discretion to allow leave to remain outside the rules, which may be unrelated to any protected human rights. The merits of a decision not to depart from the rules are not reviewable on appeal: Section 86(6). One may sympathise with Sedley LJ's call in *Pankina* for common sense in the application of the rules to graduates who have been studying in the UK for some years (see paragraph 47 above). However, such considerations do not by themselves provide grounds of appeal under Article 8, which is concerned with private or family life, not education as such. The opportunity for a promising

student to complete his course in this country, however desirable in general terms, is not in itself a right protected under Article 8.”

6. The judge also noted that there was authority from the Upper Tribunal in the case of *CDS (Brazil)* [2010] UKUT 305, which found that a student’s right to private life was engaged on the facts of that particular case. He therefore had in mind the relevant authorities relating to private life and how it might apply in cases involving students.
7. In paragraph 35 of the decision the judge concluded that if the appellant and her husband had to return to India it would not interfere with their right to family life. That finding has not been challenged and was clearly correct given that the family members could return together. It is the judge's findings in [36] that are really the subject of the challenge in this appeal. The judge concluded that requiring the appellant to return at that stage of her studies in June 2015 would cause a significant interference with her right to private life and he concluded that the appellant's rights under Article 8(1) were sufficiently engaged. He then went on to consider whether or not the decision to refuse leave to remain and any consequent removal would nevertheless be proportionate to the legitimate aim of maintaining an effective system of immigration control. He made the following findings:

“Proportionality would then need to be considered on the basis of affirmative findings to the other questions posed by Lord Bingham in *Razgar* prior to reaching the assessment of proportionality. It is undoubtedly the case that ample funding was, and is, available to sustain the first appellant and her dependant appellants. However such circumstances do not mean that where an individual fails to meet the requirements of the Immigration Rules, this Tribunal can take what might be termed a broad brush approach and find therefore that it will be disproportionate to require the appellants to leave this country. Parliament through procedures amending the Immigration Rules, has very clearly set out specific provisions. In relation to a student wishing to continue to remain on that basis in this country such provisions are clear. They are specific and the first appellant needed to satisfy them. The fact that her husband, here the second appellant, could provide that funding, does not mean that under Article 8 leave in effect should be granted on that finding by this Tribunal when I have clearly found that the specific Immigration Rule provisions could not be satisfied.”
8. I have been referred to the decision of the Court of Appeal in *SSHD v SS (Congo)* [2015] EWCA Civ 387. In that case the Court of Appeal made quite clear that the Immigration Rules are main point of assessment under Article 8 and it is only where they do not sufficiently cover the particular circumstances relating to an individual applicant that one might turn to consider whether there are any circumstances that would justify granting leave to remain outside the Immigration Rules.
9. In this case the appellant did not meet the admittedly strict requirements of Appendix C of the Immigration Rules relating to maintenance. In relation to Article 8 neither she, nor any other member of her family, meet the

private or family life requirements contained in paragraph 276ADE and Appendix FM respectively. What the Court of Appeal made clear in *SS (Congo)* was that it would only be in compelling circumstances that an infringement of Article 8 would be found if an appellant did not otherwise meet the requirements of the Immigration Rules.

10. While the points-based system scheme contains fairly strict evidential requirements it has been found in a number of cases that it is open to the respondent to introduce such requirements in order to enable the effective administration of immigration control. Some flexibility in relation to evidence has been incorporated into the Immigration Rules in paragraph 245AA but it is accepted on behalf of the appellant that none of the particular circumstances that might engage evidential flexibility apply in this particular case.
11. While the complexity of the Immigration Rules does mean that there will be occasions where an the appellant makes an innocent mistake, perhaps not fully understanding the importance of some of the evidential requirements, it is still the case that there is unlikely to be a breach of Article 8 in the absence of any compelling circumstances. In this case the appellant and her family have lived in the UK since 2013 and there is no argument to suggest that Article 8 is engaged in relation to particularly strong ties to the UK. The evidence suggests that the appellant is likely to have completed the course of study so any alleged infringement would now be academic.
12. While it is clearly the case that the First-tier Tribunal Judge had some sympathy for the appellant's situation, which is evidenced by his remarks at the end of the decision, I find that there is no basis on which to set aside his findings relating to Article 8, which were in accordance with the relevant case law and were open to him to make on the particular facts of this case.
13. I conclude that the First-tier Tribunal decision did not involve the making of an error on a point of law. The First-tier Tribunal decision shall stand.

DECISION

The First-tier Tribunal's decision did not involve the making of an error on a point of law.

The First-tier Tribunal's decision shall stand

Signed 

Date 07 January 2016

Upper Tribunal Judge Canavan