Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/01343/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 10th June 2014	**On 22nd July 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR KARAMAGI JULIUS NKAIJABUZIMA
(NO ANONYMITY DIRECTION)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No legal representation
For the Respondent: Mr S Whitwell (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Somal promulgated on 18th March 2014, following a hearing on 7th March 2014. In the

determination, the judge allowed the appeal on Article 8 ECHR grounds of Mr Karamagi Nkaijabuzima. The Respondent Secretary of State applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Uganda, who was born on 18th November 1966. He appealed against the decision of the Respondent Secretary of State dated 10th December 2013 to be allowed to remain in the UK outside the Immigration Rules on compassionate grounds.

The Appellant's Claim

3. The Appellant's claim is that, having entered the UK as a visitor on 27th April 2008, and having subsequently been granted permission to remain in the UK as a student from 13th January 2009 until 22nd September 2009, following which he was granted further leave for a post studies visa until 18th January 2013, he should now be allowed to remain in the UK in order to complete a three month course with RRC Consultants, for which he had already paid tuition fees.

The Judge's Findings

4. The judge found that the Appellant could not meet the requirements of paragraph 276ADE under the Immigration Rules. However, the Appellant was embarked on studies. In **OA (Nigeria) [2008]** the Court of Appeal held that if there was some evidence that forcing an Appellant to return to Nigeria would impact upon his studies, then this could lead to Article 8 rights prevailing over immigration considerations.

5. The judge held that, "the evidence is that he has been studying throughout and if anything working hard and achieving academic success" and that "he has never breached the Immigration Rules" and that "he has invested heavily in monetary terms in his education in the UK and he has ample financial funds to complete his course, of which there are only a few months left" (paragraph 15).

6. Given this was the case, the judge found that "on balance" that "he should be allowed to complete the course he is undertaking on human rights grounds" (paragraph 15). The appeal was allowed on the basis of Article 8 of the HRA 1998.

Grounds of Application

7. The grounds of application state that the judge erred in law because the strictures in **Nagre [2013] EWHC 720** and in **Patel [2013] UKSC 72** had not been followed by the judge. The judge could only consider freestanding Article 8 rights if there were "compelling circumstances" that justified his going outside the Immigration Rules and entering the domain of freestanding Article 8 jurisprudence. The case of **Patel**

[2013] UKSC 72 had emphasised (at paragraph 57) that the Appellant's education when seen in isolation is insufficient to engage Article 8.

8. On 30 April 2014, permission to appeal was granted by the Tribunal.

The Hearing

9. At the hearing before me on 10th June 2014, Mr Whitwell also referred to the recent Tribunal judgment in **Gulshan [2013] UKUT 00640**, where the judgment of Cranston J emphasised even more the compartmentalisation of the Immigration Rules separately from freestanding Article 8 ECHR rights, when regard is had to an applicant's private or family life rights. Mr Whitwell also drew my attention to the more recent Court of Appeal judgment in **Haleemudeen** where Beatson LJ emphasised that the Rules have a greater weight than merely as a starting point for the consideration of proportionality and that an explanation had to be given for why Article 8 freestanding, when a case could not succeed under the Immigration Rules (see paragraph 47). My attention was also drawn to the Upper Tribunal decision in **Nasim [2014] UKUT 00025**.

10. Finally, Mr Whitwell drew my attention to the Respondent's Rule 24 response, which I have taken into account.

11. For his part, the Appellant himself relied upon a typed letter to the effect that he had provided evidence of his employment and of his studies and that he was simply seeking more time to be allowed to complete three months of his studies so that he does not become an overstayer and fall foul of the law in this country.

12. He states in the letter that:

> "I have legally lived here and I have been compliant to Immigration Rules for over five years; and more so I have been leveraged to contribute towards state development in form of hard working and paying taxes of which I contribute £620 in the form of monthly tax."

The Appellant appeared in person and his representations did not necessarily deal with the points in issue before this appeal in the way that they should have done.

No Error of Law

13. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside that decision. My reasons are as follows.

14. This is a case where there was never any question that the Appellant could not succeed under the Immigration Rules. Indeed, the Appellant did not make an application under the Immigration Rules. His application was to be allowed to remain in the UK outside the Immigration Rules on compassionate grounds. However, the judge did consider paragraph 276ADE and briskly concluded that the Appellant could not succeed under the Rules (paragraph 8).

15. It was only after this, that the judge went on to consider Article 8. It is well-known that "exceptionality" is not a legal test to be satisfied. Lady Hale has made it clear in the **Genoa** case that "exceptionality" is simply a prediction of the state of facts known to exist or likely to exist. In this case, the judge is clear about two matters.

16. First, that a disruption of a person's studies "in itself could not be conclusive evidence of interference with private life" (see paragraph 13).

17. Second, that "a student here on a temporary basis has no expectation or right to remain in order to further … ties and relationships …" (paragraph 14).

18. It was on the basis of these two fundamental considerations, that the judge then made a finding in two respects.

19. First, that the degree of disruption to the Appellant's ability to get a degree and promote his future would engage Article 8 (paragraph 13).

20. Second, that the Appellant has not just been working in this country, and not just been achieving academic success but that "he has invested heavily in monetary terms in his education" and that "he has ample financial funds to complete his course". But more importantly even than this, was the fact that "there are only a few months left" (paragraph 15).

21. In this respect, the judge was entitled to conclude that the balance of considerations in a "proportionality" exercise fell in favour of the Appellant on the facts of this case. It is not for a reviewing Tribunal to interfere with such findings unless they can be said to be "perverse" or otherwise "irrational".

22. The judge gave careful and considered attention to the facts before her. She considered in a manner that was entirely open to her. There is no error of law.

Decision

23. There is no material error of law in the judge's decision. The determination shall stand.

24. No anonymity order is made.

Signed Date

Deputy Upper Tribunal Judge Juss 21st July 2014