Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/09279/2013

THE IMMIGRATION ACTS

Heard at Bradford
On 1 November 2013

Determination Promulgated
On 31 January 2014
…………………………………

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant

and

SANDEEP MANARJAN
Respondent

Representation:

For the Appellant: Mr Diwncyz, a Senior Home Office Presenting Officer
For the Respondent: Not present or represented

DETERMINATION AND REASONS

1. The respondent, Sandeep Manarjan, was born 28 October 1990 and is a citizen of Nepal. I shall hereafter refer to the respondent as "the appellant" as he was before the First-tier Tribunal and to the appellant as "the respondent". The appellant appealed to the First-tier Tribunal against a decision to refuse him further leave to remain as a student (Tier 4). That refusal was issued on 8 March 2013 and the First-

© CROWN COPYRIGHT 2014

tier Tribunal, in a determination promulgated on 13 August 2013, dismissed the appeal under the Immigration Rules but allowed the appeal on Article 8 ECHR grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. I was satisfied that the appellant had been served with a copy of the notice of hearing by first-class post on 7 October 2013 at his last known address in Sheffield. There was nothing on the file to indicate that that notice of hearing had failed to reach him. In the circumstances, I proceeded to hear the appeal in the absence of the appellant/any representative.

3. The judge had not been satisfied that the appellant could meet the maintenance requirements of paragraph 245 of HC 395 (as amended). The appellant had completed an HND diploma in business and applied for an extension of his visa to study for a BSc in finance and accounting at Anglia Ruskin University. He had paid the tuition fees totalling £5,750. The judge noted that the appellant's "argument" under Article 8 ECHR concerned his private, rather than his family life in the United Kingdom. He noted that, were the appellant compelled to return to Nepal in order to make his application, he would "have wasted a year, at the very least" [26]. At [27] the judge wrote:

> In the circumstances I am satisfied that the consequences of the decision are sufficient interference with the right to respect for private life that Article 8 is engaged (sic). I accept the interference is in accordance with the law, the Immigration Rules. I do not however accept that the decision has the legitimate aim of maintaining the economic wellbeing of the country by sensible immigration control. The appellant has been here for four years and there was no suggestion that he has ever relied in any way upon the state. He has been funded by her family (sic) throughout and has expended a substantial amount of money in university fees and in providing for his maintenance and accommodation. I am satisfied on the evidence that is before me that his family are willing and able to continue to fund him in the same way as before. He has not been, and is unlikely to be, a burden on the state. Indeed, the opposite is true; he has invested heavily in the UK. If he returned to Nepal now he would inevitably waste a year going through the process of applying for a visa to allow him to return.

4. The judge then went on at [28], to conclude:

> If I am wrong about that then, for the reasons given in the preceding paragraph, I do not accept that it is proportionate to remove the appellant from the UK in the circumstances.

5. At [25], the judge referred to the familiar checklist in **Razgar** **[2004] UKHL 27** at [17].

6. I consider that the judge has misunderstood the questions posed by the House of Lords in **Razgar**. It appears that he has answered question (4) in the negative concluding that interference with the appellant's private life which was in accordance with the law is not necessary for the economic wellbeing of the United Kingdom as provided for by Article 8(2). He should have answered that question in the affirmative because it is clearly necessary for the public authority to interfere with an individual's private life for one of the reasons stated in question (4). The judge's observation at [27] goes to the question of proportionality, not to the necessity of a public authority being required by an Article 8(2) reason to interfere with private or family life.

7. It appears that the judge himself may have had misgivings regarding his approach at [27] because, as I have recorded above, he went on to find in the alternative that the decision would not be proportionate. His misunderstanding of the questions posed in **Razgar** is, perhaps, not material as a consequence but I find that I agree with the Secretary of State that the judge has failed to give any or adequate reasons at [28] for finding that the decision to remove the appellant would be disproportionate. He has dealt in some detail with the problems which the appellant would face if he were required to return to Nepal to make an out-of-country application but he has attached little, if any, weight to the public interest concerned with his removal. This appellant has failed to show that he satisfies the Immigration Rules as regards his continued maintenance in the United Kingdom. Notwithstanding that fact, the judge has accepted that he would not become a financial burden upon the state. In my view, the judge has simply used Article 8 to enable the appellant to circumvent the maintenance requirements of the Immigration Rules. He has failed to have any regard to the public interest concerning the removal of those who fail to satisfy the Rules. Further, as the respondent noted in the grounds of appeal, he has failed to have regard to the principles set out in the Tribunal decision of **MM (Zimbabwe) [2009] UKAIT 00037**. The Tribunal found in that case, "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". The judge has not considered the possibility of the appellant pursuing his education outside the United Kingdom; there is nothing so compelling regarding the circumstances of this appellant that required him to remain in the United Kingdom to complete his studies. Further, the appellant can have had no proper expectation that he would be allowed to remain in the United Kingdom if he failed to meet the Immigration Rules. Set against those considerations, there lies the public interest in maintaining an effective system of immigration control. The impression given by the judge's determination is that he felt sorry for an appellant who had failed to satisfy the unnecessarily detailed and technical requirements of the points-based system. Article 8 should not be used as an expedient remedy in such circumstances. Where the public interest is not a fixity, I can identify no aspects of the appellant's circumstances which indicates that it should be trumped in the Article 8 ECHR analysis.

8. It follows from what I have said that the judge's determination should be set aside. I have remade the decision. The appeal is dismissed under the Immigration Rules. The appeal is dismissed on human rights grounds (Article 8 ECHR).

Signed Date 30 December 2013

Upper Tribunal Judge Clive Lane