



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

Appeal Number: IA/38497/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16 December 2014**

**Determination  
Promulgated  
On 18 December 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS**

**Between**

**MR KENJI YOKATACHI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C Talacchi, Counsel, instructed by Farani Javid Taylor  
Solicitors LLP

For the Respondent: Miss A Everett, Home Office Presenting Officer

**DETERMINATION AND REASONS**

**The History of the Appeal**

1. The Appellant, Mr Kenji Yokatachi, a citizen of Japan, appealed against the refusal of the Respondent to vary his leave to enter or remain the UK. His ensuing appeal was heard on 20 August 2014 by Judge Clapham, sitting at Taylor House. Both parties were represented, the Appellant by Mr

Talacchi. In a determination of 22, promulgated on 25 August 2014, the appeal was dismissed on Article 8 human rights grounds.

2. The Appellant sought permission to appeal, which was granted on 23 October 2014 by Judge Hollingworth, who summarised them thus:

“The judge has not referred to the criteria in **Razgar** before proceeding to consider whether there would be a breach of Article 8. An arguable error of law has arisen in relation to the way in which the judge has directed himself in these circumstances. It is arguable that the proportionality exercise has been affected in these circumstances.”

3. In a Rule 24 response of 20 November 2014 the Respondent submitted that the judge had directed himself appropriately and, whilst not referring to **Razgar**, had at paragraphs 18 and 19 comprehensively assessed proportionality.
4. The error of law hearing took the form of submissions, which I have taken into account, together with the permission application and the Rule 24 response. I reserved my determination.

## **Determination**

5. The judge did not refer in his determination to **Razgar**, nor articulate the five stage step-by-step process. Finding at paragraph 17 that the Appellant did not succeed under the Immigration Rules, he undertook at paragraphs 18 and 19 a proportionality assessment. He clearly found the existence of private life, as he stated at paragraph 20, and clearly considered the other **Razgar** criteria to be satisfied in order to reach the stage of assessing proportionality.
6. At first impression the Appellant was not therefore disadvantaged by this compressed legal process. Mr Talacchi, however, submitted that he had been, because the way in which the judge had appraised the Appellant's situation had led him to confine the Appellant's private life to a matter of months spent in the UK and to some social ties which he had forged there. Had the judge considered his situation holistically he would have found his private life to be weighty and perhaps therefore have assessed proportionality differently.
7. To this Miss Everett responded that the judge had taken all relevant material into account. The Appellant's evidence was in his statement, particularly at paragraphs 6 to 9, where he dealt with the abuse which he had suffered in Japan. His evidence was properly reflected throughout the determination, culminating in a fair and balanced proportionality assessment at paragraphs 18 and 19.

8. I accept the submissions of Miss Everett. As a matter of law it is not necessary for a judge to articulate the **Razgar** paradigm. Most recently, **R (on the application of Esther Ebus Oludoyi & Others) v SSHD (Article 8 - MM (Lebanon) and Nagre) IJR** [2014] UKUT 00539 (IAC), revisiting **Nagre**, **Gulshan** and **Shahzad**, has so held at paragraph 23. The judge found the existence of private life, implicitly found that the intervening **Razgar** steps had been satisfied and assessed proportionality. In so doing he took into account all relevant evidence as he had summarised it in his determination. His proportionality assessment is fair and balanced and the conclusions which he reached were reasonably open to him from the evidence. His determination does not reflect any error of law.

### **Decision**

9. The determination does not contain any error of law, and it upheld.

Signed

Dated: 17 December 2014

Deputy Upper Tribunal Judge J M Lewis