



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

Appeal Number: OA/13526/2013

THE IMMIGRATION ACTS

Heard at FIELD HOUSE

On 16.9.2014

Determination

Promulgated

On 25.09.2014

Before

**UPPER TRIBUNAL JUDGE PITT
DEPUTY JUDGE OF THE UPPER TRIBUNAL GA BLACK**

Between

**MISS ALHANA BEGUM SAHABUDEEN
(ANONYMITY ORDER NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - CHENNAI

Respondent

Representation:

For the Appellant: Mr J Martin (Counsel instructed by S Satha & Co)
For the Respondent: Mr Avery (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This matter comes before us for consideration as to whether or not there is a material error of law in the determination promulgated by the

First-tier Tribunal (Judge Ghani) on 2nd April 2014 in which the Tribunal dismissed the appeal against a refusal dated 15th May 2013 by an Entry Clearance Officer of an application as an adult dependent relative under Appendix FM of the Immigration rules.

2. The appellant is a citizen of India and her date of birth is 29.5.1991.

Background

3. The respondent was not satisfied that the appellant met the requirements of the rules because she did not meet the criteria for long term care as a result of age, illness, or disability.
4. The respondent was not satisfied that the appellant established family life under Article 8 given that she studied in India and spent only vacations with her family in the UK.
5. There was no dispute that the appellant was unable to meet the Immigration Rules [13]. The Tribunal considered Article 8 with reference to **Gulshan (Article 8 - new rules/correct approach) [2013 UKUT 00640, Nagre (2013) EWCA 720 (Admin) and Sabir [2014] UKUT 00063IAC** [14]. It found no compelling or exceptional circumstances rendering the decision unjustifiably harsh requiring it to go on to consider a second stage Article 8 assessment.

Grounds of appeal

6. The grounds maintain that the Tribunal erred by failing to continue to a second stage Article 8 assessment. The Tribunal ought to have considered the evidence of family life between adults. Reliance was placed on **SSHD v HK Turkey [2010] EWCA Civ 583** and **RP and RP (Zimbabwe) [2008] EWCA Civ 825**.
7. The grounds also maintained that the Tribunal made errors in the determination as to date of commencement of the appellant's course of studies which was 2008 rather than 2012 and that the failure to consider the correct dates was material.

Permission to appeal

8. Permission was granted by Upper Tribunal Judge King following a renewed application. It was stated to be arguable that adult family life ought to have been considered more carefully but that evidence of compelling and compassionate circumstances would be expected if the point was to be material.

The hearing

9. Mr Martin relied on the grounds of appeal. The appellant established family life; as a student she had never led an existence independently of her parents. Appendix FM was too restrictive. The Tribunal ought to have conducted a full second stage Article 8 assessment. The appellant would have been granted indefinite leave to remain in line with the rest of the family in 2012 had she remained in the UK rather than returning to India to resume her studies after the respondent declined to accept the premium services applications initially made. The proportionality assessment could have been decided in the appellant's favour given the particular factors in her case.
10. Mr Avery relied on the Rule 24 response that the Tribunal correctly considered the **Gulshan** approach and gave reasons why there was no need for a second stage Article 8 assessment. The error in the date as to when the appellant decided to return to India to study medicine was not material and the fact that the decision was taken in 2008, in fact, weakened the argument as she had been living apart from her immediate family for even longer. It was her decision to remain in India to pursue her studies. There were no exceptional circumstances.
11. Mr Martin emphasised that the issue was the fact of the appellant being a student and dependent on her family that was important in the assessment of family life not the location of her studies.
12. At the end of the hearing we reserved our decision which we now give with our reasons.

Discussion and decision

13. The Tribunal's starting point was to consider the appeal under the Immigration Rules, which were not met [13]. The Tribunal then followed the approach in **Gulshan**. However, this has to be looked at now in light of **MM, AM & SJ [2014] EWCA Civ 985** in particular paras 128-132, in which it was decided that the **Gulshan** "arguably good grounds" test was not appropriate. The Tribunal here should have gone on to assess whether there was a family life for the purposes of Article 8, notwithstanding the definition of family life for the purposes of the Immigration Rules and, if there was, proceed to the remainder of the **Razgar** questions.
14. It was not our view that the failure to assess family life could be found to be material, however, as the evidence before the First-tier Tribunal could not show that it existed. The appellant has been studying to be a doctor in India, living apart from her family and on her own since 2008. The fact that her parents were paying for her studies and that she came to the UK during a great deal of her vacation time was not sufficient, given her age and the length of time she has lived apart from her family, to show a relationship of such dependency or emotional ties over and

above the norm for it to be arguable that she had a family life for the purpose of Article 8.

15. Even if family life as between adults were established on the grounds that the appellant was a dependent student, we are satisfied that the appellant was not able to establish that the decision was disproportionate. The failure to meet the Immigration Rules is a starting and significant factor weighing against her; Haleemudeen v SSHD [2014] EWCA Civ 558 applied. The appellant took the decision to remain in India to continue her studies in 2008 and to return to continue those studies in 2012 rather than remaining in the UK to reapply for indefinite leave to remain with her family. She has not lived for any length of time in the UK with her family; only visits during the holidays were made.

Decision

17. The determination discloses no material error of law and shall stand.

Signed

24.9.2014

Date

GA Black
Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER
NO FEE AWARD

Signed

24.9.2014

Date

GA Black
Deputy Judge of the Upper Tribunal