Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/39756/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 19 February 2016	**On 17 March 2016**

Before

Deputy Upper Tribunal Judge Pickup

Between

Kanagarajar Kajaneshan
[Anonymity direction not made]

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr J Plowright, instructed by Indra Sebastian Solicitors
For the respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Kanagarajar Kajaneshan, date of birth 28.9.79, is a citizen of Sri Lanka.

2. This is his appeal against the decision of First-tier Tribunal Judge Molloy promulgated 28.8.15, dismissing his appeal against the decision of the Secretary of State, dated 22.9.14, to refuse him leave to remain outside the Immigration Rules to receive medical treatment and to remove him from the UK pursuant to section 47 of the Immigration Asylum and Nationality Act 2006. The Judge heard the appeal on 14.8.15.

3. First-tier Tribunal Judge Murray granted permission to appeal on 5.1.16.

4. Thus the matter came before me on 19.2.16 as an appeal in the Upper Tribunal.

Error of Law

5. For the reasons set out below I found no error of law in the making of the decision of the First-tier Tribunal such as to require the decision of Judge Molloy to be set aside. I announced my decision at the appeal hearing, reserving my reasons, which I now give.

6. The relevant background can be briefly summarised as follows. The appellant first entered the UK on 19.2.06 with leave to remain as a student. This was subsequently extended to 13.12.12. However, on 8.5.12 his student leave was curtailed to expire 7.7.12, as the UKBA was informed that he had ceased studies. On 28.6.12 he applied for leave to remain outside the Rules, which was granted on a discretionary basis to 24.6.14. Shortly prior to the expiry of that leave, he applied on 16.6.14 for leave to remain outside the Rules on human rights grounds, because of his medical condition, asserting that to remove him would be contrary to article 3 ECHR. The medical evidence is summarised in the refusal decision, but in short since about 2009 he has been treated for kidney problems and latterly renal failure, ultimately requiring a kidney transplant.

7. The Secretary of State's case on refusal was that notwithstanding the appellant's ill-health he has not established a sufficiently real risk that his removal from the UK would breach article 3. He is not in the final stages of his illness associated with an absence of appropriate treatment and support in Sri Lanka. His circumstances are not exceptional and thus do not reach the high threshold sufficient to engage article 3, pursuant to the case law including N v SSHD [2005] and N v UK [2008] ECHR 453.

8. In summary, the grounds of application for permission to appeal assert that the judge misapplied the case of CS & others v SSHD [2015] EWCA Civ 40, which held that the absence or inadequacy of medical treatment, even life-preserving treatment, in the country of return, cannot be relied on at all as a factor engaging article 8; if that is all there is, the claim must fail. At §86 the court held that if the article 3 claim fails, "article 8 cannot prosper without some separate or additional factual element which brings the case within the article 8 paradigm – the capacity to form and enjoy relationships – or a state of affairs having some affinity with the paradigm."

9. Thus, where article 8 is engaged by other factors, the fact that the appellant is receiving medical treatment in this country and which may not be available in the country of return, may be a factor in the proportionality exercise, but it cannot by itself give rise to a breach since that would give rise to a breach that would contravene the 'no obligation to treat' principle. A specific case has to be made out under article 8.

10. Mr Plowright sought to distinguish the claimant in GS from this appellant, on the basis that GS had been in the UK unlawfully, which fact was said to negate the effect which his right to respect for private life would otherwise have had on his article 8

claim. This appellant entered the UK lawfully with leave and has had lawful leave throughout, despite curtailment of leave. The point is also made that he is not seeking indefinite leave to remain but only to complete his studies, interrupted by his serious ill-health, before returning to Sri Lanka.

11. Mr Plowright submits that at §19 of the decision the judge ruled out of consideration any article 8 private life claim, focusing solely on the health issues.

12. However, it is beyond argument that as a student the appellant's immigration status in the UK must be regarded as precarious, pursuant to section 117B of the 2002 Act and thus little weight should be accorded to any private life developed in the UK. Whilst Mr Plowright relies on the lengthy period of lawful presence in the UK, the appellant cannot claim any 'credit' towards private life for the fact that his presence has been lawful.

13. Further, the recent case law has established that status as a student does not give rise to private life engaging article 8, as held in Nasim and others (article 8) [2014] UKUT 00025 (IAC), where the Upper Tribunal considered whether the hypothetical removal of the 22 PBS claimants, pursuant to the decision to refuse to vary leave, would violate the UK's obligations under article 8 ECHR. Whilst each case must be determined on its merits, the Tribunal noted that the judgements of the Supreme Court in Patel and Others v SSHD [2013] UKSC 72, "serve to re-focus attention on the nature and purpose of article 8 of the ECHR and, in particular, to recognise that article's limited utility in private life cases that are far removed from the protection of an individual's moral and physical integrity."

14. The panel considered at length article 8 in the context of work and studies. The respondent's case was that none of the appellants could demonstrate removal would have such grave consequences as to engage article 8. §57 of Patel stated, "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 right… 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."

15. At §14 of Nasim, the panel stated:

> "Whilst the concept of a "family life" is generally speaking readily identifiable, the concept of a "private life" for the purposes of Article 8 is inherently less clear. At one end of the "continuum" stands the concept of moral and physical integrity or "physical and psychological integrity" (as categorised by the ECtHR in eg Pretty v United Kingdom (2002) 35 EHRR 1) as to which, in extreme instances, even the state's interest in removing foreign criminals might not constitute a proportionate response. However, as one moves down the continuum, one encounters aspects of private life which, even if engaging Article 8(1) (if not alone, then in combination with other factors) are so far removed from the "core" of Article 8 as to be readily defeasible by state interests, such as the importance of maintaining a credible and coherent system of immigration control."

16. The panel pointed out that at this point on the continuum, "the essential elements of the private life relied on will normally be transposable, in the sense of being capable of replication in their essential respects, following a person's return to their home country, (§15)" and (§20) recognised "its limited utility to an individual where one has moved along the continuum, from that Article's core area of operation towards what might be described as its fuzzy penumbra. The limitation arises, both from what will at that point normally be the tangential effect on the individual of the proposed interference and from the fact that, unless there are particular reasons to reduce the public interest of enforcing immigration controls, that interest will consequently prevail in striking the proportionality balance (even assuming that stage is reached)."

17. Applying the above guidance and case authority, even if the judge had addressed the issue of private life in more depth, it is inevitable that the same conclusion would have been reached: that there is no private life sufficient to engage article 8 and to which the factors relating to the appellant's ill-health could attach so as to justify granting leave to remain outside the Immigration Rules, on the basis of compelling circumstances not sufficiently recognised in the Rules.

18. The ground of appeal takes advantage of a supposed failure to address private life in any detail, but I am not satisfied that the judge was required to do so on the facts of this case and even if he was so required, the case law is entirely against the appellant so that his ill-health cannot and could not convert an otherwise unremarkable and entirely uncompelling private life claim to one that would engage article 8.

19. In my view, the grant of permission to appeal was misguided. There is no material error of law in the decision of the First-tier Tribunal.

Conclusions:

20. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.

Signed

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed and thus there can be no fee award.

Signed

Deputy Upper Tribunal Judge Pickup