Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/41447/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 16 December 2015	**On 4 January 2016**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

MADHAM MOHAM SOMA SUNDARAM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K. Mowla of Victory Solicitors
For the Respondent: Mr N. Bramble, Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant entered the UK on 25 December 2010 with entry clearance as Tier 4 (General) Student Migrant that was valid until 31 May 2012. On 31 May 2012 he applied for further leave to remain on a discretionary basis in order to allow time for him to complete his dissertation. The respondent refused the application on 31 May 2012. First-tier Tribunal Judge Powell allowed the appeal in a decision promulgated on 30 January 2014. The judge allowed the appeal only to the limited extent that the decision was not in accordance with the law, the effect of which was to return the matter to the respondent for a further decision to be made.

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2. On 30 May 2014 the respondent made a further decision refusing leave to remain. The respondent concluded that the appellant did not meet the requirements of the family life provisions contained in Appendix FM of the immigration rules because he was not married to a British citizen and had no children in the UK. The respondent went on to consider whether the appellant met the private life requirements contained in paragraph 276ADE of the immigration rules but concluded that the appellant did not meet the 20 year long residence requirement contained in paragraph 276ADE(1)(iii). Nor did he meet the requirement of paragraph 276ADE(1)(vi) because he could not show that he had lost all ties to his home country. The respondent considered that there were no exceptional circumstances in this case that would justify granting leave to remain outside the immigration rules.

3. The appellant appealed the decision. By the date of the hearing before First-tier Tribunal Judge Saunders he claimed that his circumstances had changed and he was now married to an EEA national. The appellant said that he married a Danish citizen in a religious ceremony on 30 March 2015. At the hearing the appellant said that he only sought a short period of leave in order to allow time for him to submit an application for an EEA residence card. He said that his wife was not currently in the UK because she was looking after her mother in Denmark. First-tier Tribunal Judge Saunders allowed the appeal on this limited basis. Upper Tribunal Judge Pinkerton set aside her decision on 06 November 2015 because there was insufficient assessment of the public interest considerations under Article 8 of the European Convention.

4. The appeal was listed for a resumed hearing in order to remake the decision. At the resumed hearing I was told that the appellant's circumstances had changed once again and he was no longer in a subsisting relationship with his wife. The appellant had prepared an up to date statement outlining the circumstances. He said that he was upset by the fact that his wife had abandoned him. He said that his family and friends got to know of the breakdown of his marriage and he had been ridiculed in the community. He said that he was finding it difficult to deal with the situation and needed more time to regain his self-respect before returning home. If he was allowed to remain he wouldn't cause any harm or disturbance to the public or society at large.

<u>Decision and reasons</u>

5. The appellant is a 28 year old man who has lived in the UK for nearly six years. He spent the first 23 years of his life living with his family in India. He says that he was studying before he came to the UK. The appellant entered the UK with limited leave to remain as a student, which is a short-term category that provides no expectation of long term settlement. The appellant wanted to complete an MSc in Automotive Engineering. Although he was not awarded the full qualification because he failed his dissertation he was awarded a Post-graduate Diploma in Automotive Engineering in 2012. No doubt during this time the appellant made friends in the UK and

has established some ties. He says that his sister also lives in the UK but little information has been provided as to her circumstances. His relationship with his sister was not relied on as one that might engage the operation of the right to family life Article 8 of the European Convention of Human Rights. There is little evidence to show that the appellant has established any significant ties to the UK during his relatively short period of residence.

6. The basis of the appellant's claim to remain on EEA law grounds has now fallen away. Even taken at its highest there is no evidence to show that his wife has ever lived in the UK or exercised her rights of free movement here. The appellant says that the relationship broke down in August 2015 and it is understandable that he will feel upset by the situation given that it was his wife's decision to end the relationship.

7. It is accepted that the appellant does not meet the family or private life requirements of the immigration rules. The appellant's length of residence falls far short of the 20 year requirement contained in paragraph 276ADE(1)(iii) of the immigration rules. At the date of the decision paragraph 276ADE(1)(vi) required an applicant to show that he had "no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK". The appellant could not meet the requirement because he has spent the majority of his life living in India and continues to have close relatives there. At the date of this hearing the test has been changed to whether there are "very significant obstacles" to the appellant reintegrating in India but apart from his reluctance to return because of a certain level of embarrassment about his current situation there is no evidence to show that he would face the kind of significant obstacles that would be needed to satisfy the fairly stringent test set out in either version of the immigration rules.

8. The immigration rules are said to reflect the respondent's view of where a fair balance should be struck between the right to respect for private and family life and public interest considerations relating to the maintenance of an effective system of immigration control (paragraph GEN.1.1 Appendix FM). The rules should be read in a way that reflects a proper interpretation of Article 8 of the European Convention. However, there may some cases where the rules do not address relevant Article 8 issues. In such cases it may be necessary to consider whether there are compelling circumstances to justify granting leave to remain outside the immigration rules: *SSHD v SS (Congo)* [2015] EWCA Civ 387. This should be assessed by reference to the five stage test outlined by the House of Lords in *R v SSHD ex parte Razgar* [2004] 3 WLR 58.

9. No doubt the appellant has made some friends and connections to the UK in the last six years but there is little evidence to show that he has established a private life of the kind that might engage the operation of Article 8 of the European Convention. However, I bear in mind that following the decisions in *AG (Eritrea) v SSHD* [2007] INLR 407 and *VW (Uganda) v SSHD* [2009] EWCA Civ 5 that the threshold for showing an interference with an appellant's rights under Article 8 is not particularly

high. For this reason I find that it is likely that the appellant has established some form of private life in the UK and that in all the circumstances of this case removal would interfere with that life in a sufficiently grave way as to engage the operation of Article 8 (points (i) & (ii) of Lord Bingham's five stage approach in *Razgar v SSHD* [2004] INLR 349).

10. Article 8 of the European Convention protects the right to family and private life. However, it is not an absolute right and can be interfered with by the state in certain circumstances. It is trite law that the state has a right to control immigration and that rules governing the entry and residence of people into the country are "in accordance with the law" for the purpose of Article 8. Any interference with the right to private or family life must be for a legitimate reason and should be reasonable and proportionate.

11. In assessing whether removal in consequence of the decision would be a proportionate response I am required to take into account the public interest considerations set out in section 117B of the Nationality, Immigration and Asylum Act 2002 ("NIAA 2002"). I take into account that it is in the public interest to maintain an effective system of immigration control (s.117B(1)). While the appellant speaks English and is therefore better able to integrate this is a neutral factor that does not add to his case (s.117B(2)). It is merely a factor that does not lend additional weight to the public interest considerations: see *AM (S.117B) Malawi* [2015] UKUT 260. There is no evidence to show whether the appellant is or has financially independent (s.117B(3)). In any event, it would also be a neutral factor.

12. The appellant has applied for further leave to remain in time and his leave has been extended by virtue of section 3C of the Immigration Act 1971. However, his initial period of leave expired in 31 May 2012 and the rest of the time he has spent in the UK has been consumed by the appeals process. It seems that the initial application for further leave to remain was made with a request to be allowed to finish his dissertation, which he did not complete successfully. The appellant continued the appeals process despite the fact that he had no other basis on which to remain in the UK. While the marriage may have initially created the possibility of a right of residence under EU law it was brief lived. The appellant can have had no expectation of long term settlement in the UK when he arrived to study and it can properly be said that his leave has been precarious throughout his time in the UK. Section 117B(5) states that little weight should be given to a private life that has been established in the UK at a time when a person's immigration status is precarious.

13. The public interest considerations outlined in section 117B are only one part of the proportionality assessment and may still be outweighed if the appellant can show that there are particularly compelling circumstances that might justify granting leave to remain even though he doesn't meet the requirements of the immigration rules. While the appellant is going through an emotionally difficult time at the moment, and does not wish to

leave the UK, I find that there is nothing in the circumstances of this case that could properly be described as raising any such compelling circumstances. The appellant has lived in the UK for a relatively short period of time, there are no compelling compassionate circumstances, he would be able to return to his family in India, and even if there is some tension with them, there is nothing to suggest that he would not be able to live and work elsewhere in India. Unfortunately, the appellant's understandable desire to remain in the UK does not equate to a right to do so under the law.

14. For the reasons given above I find that removal in consequence of the decision would amount to a proportionate interference with the appellant's right to private life under Article 8 of the European Convention (points (iv) & (v) of Lord Bingham's five stage approach in *Razgar*).

DECISION

I re-make the decision and DISMISS the appeal

Signed Date 17 December 2015

Upper Tribunal Judge Canavan