Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/21676/2012

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination Promulgated**
On 17th July 2013	**On 2nd August 2013**
Prepared 17th July 2013	

Before

UPPER TRIBUNAL JUDGE A L McGEACHY
DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MR JUNAID ZAHEER

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R McGinley, solicitor
For the Respondent: Mr M Mathews, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Pakistan. On 30th May 2012 he made a combined application for leave to remain in the United Kingdom as a Tier 1 (General) Migrant

under the points-based system (PBS) and for a biometric residence permit. The application was refused by a letter dated 26th September 2012. The Appellant's subsequent appeal to First-tier Tribunal Judge Balloch was dismissed under the Immigration Rules and Article 8 ECHR in a determination promulgated on 6th December 2012.

2. Grounds of application were lodged asserting that the Appellant did meet Rules 276ADE and was also entitled to remain under Article 8 ECHR.

3. The application was initially refused but on renewal to the Upper Tribunal permission was granted by Upper Tribunal Judge Dawson who noted that it was arguable that the Tribunal had erred in concluding that the claimant must have been awarded the qualification at the date of the application.

4. Thus the matter came before us on the above date.

5. Having regard to **SSHD v Raju & Others [2013] EWCA Civ 754** Ms McGinley for the Appellant accepted that she could not argue that the Appellant's application was a continuing one as had initially been held by the Upper Tribunal.

6. She also accepted that because the Appellant had not lived continuously in the UK for at least twenty years he did not fall within the Immigration Rules under paragraph 276ADE(iii) and (v).

7. She submitted that the error in law in the judge's determination was to fail to consider the Appellant's rights under Article 8 ECHR in an adequate way. In particular, in paragraph 45, she had not mentioned that the Appellant had been in the UK for nine years. In paragraph 38 the judge had not mentioned that the Appellant had been in the UK for a long time. Having been here for that length of time he wanted to continue to be allowed leave to remain as a Tier 1 (Post-Study Work) Migrant. We were asked to allow the appeal.

8. For the Home Office Mr Mathews said that there had been no need for the judge to go on and comment on Article 8 ECHR given that the Appellant manifestly failed to satisfy the Immigration Rules. Reference was made to **MS v SSHD [2013] CSIH 52 -** it could not be said that the Appellant would suffer unjustifiably harsh consequences if his application was refused. There was no near miss argument available to the Appellant. Furthermore the judge had carried out a careful analysis of his private life. She had reviewed the law in detail. Paragraph 45 was a conclusion of the reasoning given in the earlier paragraphs. There was no absence of reasons and no error of law and accordingly the decision should stand.

9. We reserved our decision.

Conclusions

10. The judge commenced her analysis of the Appellant's Article 8 rights at paragraph 33 of her determination. At paragraph 34 she noted that the Appellant did have family

members in the UK and did have an established private life here given that he had been living in the UK since 2003. Accordingly the point taken by Ms McGinley that the judge had not given weight to the Appellant's time in the UK is not correct. The judge then went on to consider the five stage test set out in **R v SSHD ex parte Razgar [2004] UKHL 27** going on to mention further jurisprudence including **SSHD v Huang [2007] UKHL 11 and CDS (PBS "available": Article 8) Brazil [2010] UKUT 305**.

11. She considered the Appellant's personal circumstances and her comment at paragraph 45 was a summary of her views that the interference in the Appellant's family and private life caused by the decision of the Respondent would not be a disproportionate one.

12. Far from being an error of law in the judge's approach she analysed the position of the Appellant with great care. The submission that she did not take into account the length of time the Appellant has spent in the United Kingdom is unsound. No other criticism was made of her findings which were entirely open to her on the evidence presented. As Ms McGinley acknowledged before us the judge was correct to say that while the Appellant hoped to be able to build on his degree by gaining some work experience in the UK the object of his coming to the UK as a student has been fulfilled.

13. It can safely be said that the judge was entirely correct to find as she did namely that it would be proportionate for the Appellant to be returned to Pakistan under Article 8 ECHR. There is no error in law. The decision must stand.

Decision

14. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

15. We do not set aside the decision and the appeal is dismissed.

Signed Date

Deputy Upper Tribunal Judge J G Macdonald