Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/14778/2014

THE IMMIGRATION ACTS

Heard at City Centre Tower, Birmingham	**Decision & Reasons Promulgated**
On 8 February 2016	**On 11 February 2016**

Before

UPPER TRIBUNAL JUDGE PITT

Between

MISS HIMANI GOEL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Not represented
For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision promulgated on 24 June 2015 of First-tier Tribunal Judge Mathews. The decision refused the appellant's appeal against the respondent's decision dated 13 October 2014 to refuse entry clearance as a nurse.

2. The background to this matter is that the appellant made an entry clearance application on 13 December 2013 but that this was refused, amongst other matters, under paragraph 320(7)A of the Immigration Rules as it was found that she had made false representations in the course of

the application. The appellant lodged an appeal but this was found not to be valid where she did not raise either of the limited grounds available to her, human rights and race relations.

3. The appellant then applied again to come to the UK as a Tier 2 (General) Migrant. That application was refused on 13 October 2014 and the reasons given were as follows:

> "You were refused entry clearance on 13/12/13 based on your application form, your supporting documents and the contents of your CoS. The ECO refused your application under 245HB and 320(7)A of the Immigration Rules as they were satisfied to a high degree of certainty that you had made false representations in the course of your application and this rendered your CoS invalid. I note that you applied for administrative review and that the ECM maintained the decision in full. You then appealed against the decision and I am conscious that the Immigration Judge dismissed your appeal. With your current application, you state that you got mixed up with dates at interview. I do not accept this as an explanation and I remain satisfied that the refusal was both justified and proportionate. You made false representations in your last application and I am therefore satisfied that your application stands to be refused under paragraph **320(7B)** of the Immigration Rules. This in turn means that your application is refused under **245HB(a)** of the Immigration Rules."

4. As in the earlier appeal, the appellant's appeal here is limited by the provisions of Section 84(1)(c) of the Nationality, Immigration and Asylum Act 2002. She can only appeal on human rights and race relations ground. First-tier Tribunal Judge Mathews noted this at paragraph 10 and from paragraph 13 onwards. In particular, Judge Mathews stated this at paragraphs 15 and 16:

> "15. The remaining issue is one or (sic) Article 8 and the first stage in such consideration is to consider whether or not Article 8 is engaged. The decision of **MM (Tier 1 PSW Article 8 private life) Zimbabwe [2009] UKAIT 00037** established that respect for an individual's private life in accordance with Article 8 did not include a right to work per se, though bonds formed during employment were capable of constituting an engagement of Article 8.
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> 16. I regret to say that on the evidence before me the simple wish of the appellant to pursue employment in the United Kingdom, is in my judgment not a desire that engages Article 8 in the present case, it follows, given the limited rights of appeal available to the appellant, that she is unable to succeed in the present appeal."

5. The determination is somewhat odd in that, having recognised the limited grounds of appeal, paragraphs 17 to 20 appear to suggest that consideration was given as to whether the appellant had shown that the Immigration Rules were met. As above, Judge Mathews had already noted that there was no jurisdiction for an appeal against the decision under the Immigration Rules.

6. The grounds of appeal state (verbatim) on the first page:

> "If the honourable Judge has made notes of the whole discussion in full, then I do not see any need of providing any more argument, as those notes should be enough. The honourable Judge and the Presenting Officer accepted that the decision given to Himani in 2013 was wrong and they both apologised many times during the hearing. It was the judge who in particular, apologised on numerous occasions and even asked the Presenting Officer of his view on this. Although Judge stated that this was not his role to do this but he is finding it wrong and would like to take Presenting Officer's view on it. The Presenting Officer accepted fully that this was a mistake and the permission should be granted at the time and placing the Section 320(7B) was totally wrong. Even the Presenting Officer suggested me to apply again with the papers I presented on the day, and then there is no reason that why Himani would not get the permission to enter the UK.
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> …
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> The judge clearly showed his helplessness on the name of the rules being changed in 2012, stated that his hands are tied and he is not allowed to comment on the previous decision and only concede the case on the grounds of human rights. He even went further stating that if he had the power then he does not see any reason why this case cannot be reverted".

7. As I read the grounds, they really reiterated this same argument in different ways. The appellant remains of the view that the finding in the [2013] entry clearance decision of making a false representation was not correct. She does not feel she has had an opportunity to address that incorrect decision and Mr Aggarwal, her uncle, put that case very clearly to me at the hearing.

8. The difficulty for the appellant here is that Parliament had decided that an applicant for entry clearance in the Tier 2 category is not entitled to a right of appeal against the refusal under the Immigration Rules, only on human rights or race relations grounds. The decision on false representations is part of the decision under the Immigration Rules so cannot be litigated head on.

9. It might be a matter that comes into play before the Tribunal in a second stage Article 8 proportionality assessment. Here, as shown in paragraphs 15 and 16, Judge Mathews did not find that the appellant's wish to come to the UK to work amounted to a family or private life matter capable of engaging Article 8. Put another way, the first **Razgar** question, as to whether there was a sufficient interference such that Article 8 ECHR was engaged at all, was answered in the negative and therefore the Article 8 assessment could proceed no further and there was no proportionality assessment where the decision that false representations had been used could feature. There was no challenge to Judge Mathew's decision that Article 8 was not engaged and I found it difficult to see how a material one could be formulated where it is only the appellant's wish to work in the UK that is concerned here.

10. I should also indicate, that on the face of it the determination does not indicate that the judge found strongly for the appellant as regards her not

having made false representations in the 2013 application and there is no comment on the correctness of the 2013 or 2014 decisions under the Immigration Rules. It also does not reflect that the Presenting Officer expressed a view on the matter either. Even had it done so, however aggrieved the appellant and Mr Aggarwal may feel, as above, these were not matters that could have made a material difference where Article 8 was found not to be engaged. Therefore, where First-tier Tribunal Judge Mathews took the correct approach to the human rights appeal, it cannot be material even if he did comment at the hearing on the correctness of the refusal under the Immigration Rules. The same reasoning must also apply to the anomaly of the references to the consideration of the appeal under the Immigration Rules at paragraphs 17 to 20 of the decision.

11. For these reasons I do not find that the decision of the First-tier Tribunal discloses legal error.

Notice of Decision

The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed  Dated 8 February 2016
Upper Tribunal Judge Pitt