Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/32412/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27 July 2015	**On 3 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

EMMYLOU AMARILLE
(ANONYMITY DIRECTION NOT MADE)

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Hasan, Counsel, instructed by Kalam Solicitors
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant whose date of birth is 25 December 1984 is a citizen of Philippines. She made an application for leave to remain as a Tier 4 (General) Student Migrant under the points-based system and for a biometric residence permit.

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2. This matter comes before me as an error of law hearing. In a decision promulgated on 25 January 2015 by the First-tier Tribunal (Judge Perry) (FTT) the appellant's appeal on immigration grounds was dismissed.

Grounds of Application

3. In grounds the appellant contended that the FTT materially erred in raising concerns about the appellant's credibility, namely that it was her responsibility to check the validity of the college, and failed to given adequate reasons for reaching that conclusion whilst pointing out the related issues in the case (**MK (Duty to give reasons) Pakistan [2013] UKUT 641 (IAC))**.

4. The second ground argued was that the FTT materially erred by failing to determine the Article 8 issue which was a live issue and needed to be considered by the Tribunal. It is argued that the appellant had in incomplete/unfair hearing which ought to be remitted to the First-tier Tribunal for a hearing de novo in respect of Article 8.

Permission to Appeal

5. First-tier Tribunal Judge Andrew granted permission to appeal on 12 March 2015. As to the first ground Judge Andrew was satisfied that the Tribunal was entitled to come to the conclusion it did on the evidence before it and that it applied sufficient reasoning to the findings. As to the second ground, in relation to Article 8, this was an arguable error of law.

Rule 24 Response

6. In a letter dated 20 March 2015 the respondent opposed the appellant's appeal submitting that the FTT directed itself appropriately. It submitted that the decision and reasons of the FTT did not disclose any evidence relied on or submissions made in respect of Article 8 and in the absence of that evidence there was no material error of law. The FTT could not have come to any other decision on the evidence before it.

Error of Law Hearing

Submissions

7. Mr Hasan relied on the grounds on which permission was granted. He submitted that it was a clear error of law by the failure to consider the live issue of Article 8 ECHR.

8. Mr Whitwell submitted that whilst accepting that Article 8 was raised in the grounds of appeal (from paragraphs 15 to 23), this consisted of reference to the legal issues only. There was no reference to facts or evidence in support of the appellant's claim. Further, it was apparent from the decision that there was no oral evidence given on Article 8 issues or other evidence raised at all. It was therefore open to the FTT to find effectively that the Article 8 ground was abandoned. In the event that there was no

evidence before the FTT, then it could not be criticised for not considering it.

9. Mr Whitwell alternatively submitted that if there were an error of law found the matter should be remade on the facts that were before the First-tier Tribunal. As such there was no disproportionate breach of Article 8 in light of the fact that this was a student case (**Patel and Others [2013] UKSC 72**).

10. Mr Hasan responded that the FTT needed to show that it had considered Article 8. It was an entirely different issue as to whether or not the appellant would be successful in her Article 8 claim.

11. At the end of the hearing I gave my decision that I found no material error of law in the decision which shall stand. I now give my reasons.

Discussion and decision

12. The appellant has argued that the FTT failure to consider her appeal under Article 8 ECHR amounts to an error in law. I am satisfied that Article 8 was raised in the grounds of appeal and that the FTT was aware of that as set out in the decision at [7]. The main focus of the decision was on the issues under the Immigration Rules and no further reference was made to Article 8 ECHR.

13. On behalf of the Secretary of State reliance is placed on the Court of Appeal decision in **Sarkar v SSHD [2014] EWCA Civ 195**, in particular paragraph 13. In considering the issue of whether or not an appellant abandons grounds of appeal that he or she does not wish to pursue, the Court of Appeal stated as follows:

> "The Article 8 claim was handled in the same way. No evidence or argument was placed before the First-tier Tribunal in support of it and in my view the Tribunal was entitled to treat as having been abandoned, although it did not formally do so. Even if that were not the case, however, there was no evidential basis on which the First-tier Tribunal could have found that that grounds of appeal had been made out. It follows that if there were an error of law in failing formally to dispose of it, it was not material and the Upper Tribunal was right to refuse permission to appeal in respect of it."

14. As was pointed out by Mr Whitwell, the grounds of appeal relied on by the appellant at the First-tier Tribunal did raise Article 8 from paragraphs 15-23. However, I am satisfied that those grounds consisted largely of reference to relevant case law. At paragraph 18 the grounds state "The appellant has established a private life in the UK and is settled here. In the time she has been here she has established a strong connection." I have read the witness statement dated 13 August 2014 produced and relied on by the appellant at the FTT hearing. This statement sets out the appellant's position under the Immigration Rules and no reference is made to any details or her private life or connections with the UK. It is not

submitted on behalf of the appellant that there was additional evidence or submissions made to the FTT on this issue that had not been taken into account by the FTT. Accordingly, I am satisfied that the FTT properly approached the matter by in effect treating the Article 8 ground of appeal as abandoned. It would have been preferable for the FTT to have formally stated this in the decision but this does not amount to a material error in law. Taking into account the paucity of evidence available to the FTT any error of law in this regard is not material. Furthermore I am satisfied that there was no evidential basis on which the FTT could have found that Article 8 was breached, following **Patel and Others [2013] UKSC 72**.

> "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 of the Rules, which may be unrelated to any protected human right. The merits of the decision not to depart from the Rules are not reviewable on appeal - Section 86(6). One may sympathise with Sedley LJ's call in **Pankina** 'commonsense' in the application of the Rules to graduates who have been studying in the UK for some years (see paragraph 47 above). However such considerations do not by themselves provide grounds of appeal under Article 8, which is concerned with private and family life, not education as such. The opportunity for a promising student to complete a course in this country, however desirable in general terms, is not in itself a right protected under Article 8."

Decision

15. I find no material error of law. The decision shall stand.

No anonymity direction is made.
No fee award made.

Signed Date 30.7.2015

Deputy Upper Tribunal Judge G A Black