Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/05233/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 26 January 2016	**On 19 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

NEMANJA OSKORUS
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:
For the Appellant: Mr S Whitwell, Home Office Presenting Officer
For the Respondent: Ms E Daykin of Counsel instructed by J Andrews Solicitors

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Khan promulgated on 22 July 2015 brought with the permission of First-tier Tribunal Judge Grimmett granted on 2 December 2015.

2. Although before me the Secretary of State is the appellant and Mr Oskorus is the respondent, for the sake of consistency with the proceedings before the First-tier

Tribunal I shall hereafter refer to Mr Oskorus as the Appellant and the Secretary of State as the Respondent.

3. The Appellant is a citizen of Singapore, born on 1 April 1988. Although it is not abundantly clear on the papers, I have been told today that he acquired his citizenship of Singapore in 2008. Prior to that he had been a citizen of Serbia, but his parents had relocated to Singapore in 1995 (when the Appellant was 7) and the Appellant had remained living there up until the time that he acquired citizenship, at which point he also renounced his Serbian citizenship - it is said that the renouncement of his previous citizenship was a condition of the acquisition of Singaporean citizenship. The Appellant's parents are not nationals of Singapore and currently live in Dubai, with his sister.

4. The Appellant was schooled in Singapore and formed the ambition to study acting with a view to pursuing acting as a career. To this end he came to the United Kingdom for two relatively short courses, and then later again entered the United Kingdom on 4 January 2009 with a student visa to pursue a degree in acting. Towards the end of his period of leave on 17 November 2014 the Appellant made an application to remain on the basis of his private life.

5. The background to the Appellant's case is set out in some considerable detail in the decision of the First-tier Tribunal and is otherwise a matter of record on file. I do not propose to rehearse again all such details, but will make reference to matters as is necessary and incidental to my considerations.

Consideration: Error of Law

6. In making his application the Appellant was asked on the FLR(FP) application form to which country he would go if required to leave the United Kingdom. He specified Singapore. He had also indicated on his application form amongst other things that he had visited Singapore last in December 2011 (see section 10.3 at A28) and amongst other languages spoke Malaysian (see section 10.4). He also stated that he has "*some friends but no relatives in Singapore*" (see section 10.5), his parents and sister having departed to take up residence in the United Arab Emirates.

7. In a letter of representation submitted in support of the Appellant's application, and a statement enclosed with that letter of representation, further details were given of the Appellant's history which included the fact that he had visited Singapore whilst in the United Kingdom "*usually for Christmas and New Year's celebration, 2010, 2011, 2012*". Further reference was made to friends in Singapore in these terms:

> "*I have some friends in Singapore with whom I grew up with but they have their own lives, couple of them are married and busy with their own lives and others were offshore for seven to eight months, none of them are in the acting professions in which all my current close friendships are*."

8. The First-tier Tribunal Judge in considering the Appellant's case allowed the appeal pursuant to paragraph 276ADE(1) with particular reference to subparagraph (vi). In the alternative the First-tier Tribunal Judge also allowed the appeal by reference to Article 8 outside the Immigration Rules.

9. As regards the Immigration Rules the Judge correctly identified the relevant test at paragraph 11 of his decision in the following terms:

> "*The Appellant has to prove that being aged 18 years or above and having lived continuously in the UK for less than twenty years, there would be very significant obstacles to his integration into the country to which he would have to go if required to leave the UK, namely Singapore*."

10. The Appellant's case was put to the Judge in this regard on the basis of the factors summarised at paragraph 9 of the determination which to a substantial extent the Judge accepted in his own conclusions at paragraph 13. Paragraph 13 is in these terms:

> "*I find that very significant obstacles do exist for the following reasons, namely that the Appellant left Singapore in 2008 and he no longer retains any connections with that country. His parents no longer live there and do not intend to return as they are living and working in Dubai. After the length of time that the Appellant has been away from Singapore, I find that he has no longer retained any ties to the country. He would have to pursue his career as an actor in Singapore which would be extremely difficult because there would be a very limited opportunity to do theatre work, if any. In relation to film work, this would be Asian based and the Appellant has a very limited knowledge of any of the indigenous languages spoken in Singapore. He went to an English speaking school*."

11. In my judgment none of those factors, either individually or cumulatively, approach evidence of very significant obstacles to the Appellant's integration into Singapore. Indeed much of the emphasis of the decision - both in terms of the evidence presented and the findings of the Judge - relate to the Appellant's chosen career of acting. For my part I do not consider that not being able to pursue a chosen career is of itself capable of amounting to 'an obstacle to integration' in the absence of compelling evidence to suggest that an individual is insufficiently capable to adapt to finding some other means of supporting themselves economically. It simply means that the Appellant would have to find some other process by which he could

financially support himself in the country of his nationality. Not becoming an actor - which in the precarious nature of that profession is a possible outcome anywhere in the world - will not in the ordinary course of events prevent this Appellant (or any other frustrated thespian) from forming a social group, or finding employment, in the same way as failing to become a lawyer, an accountant or a mechanic could not be considered to be an obstacle to integration *per se*.

12. As regards the fact that the Appellant has been absent from Singapore for a period of time, I note that he has nonetheless made visits and has referred to the continuing presence of some friends there. It may be that he has not in recent times had close contact with them, but there is nothing to suggest here that he would not be able to re-awaken such contact or, in any event, seek to integrate himself into the country in which he lived for so many of his formative years and in respect of which he has performed military service and acquired nationality. It seems to me that the submissions advanced at paragraph 9, and the acceptance of those submissions at paragraph 13, are both - with all due respect - fundamentally flawed and do not go to the real question posed by the Rule, which is the question of integration. Rather they address matters such as ties and preference.

13. For those reasons I have little hesitation in concluding that the First-tier Tribunal Judge has erred in law in his approach under the Immigration Rules.

14. As regards the approach in respect of Article 8, Ms Daykin has very fairly today acknowledged that there is substance to the Secretary of State's challenge. In particular she acknowledges that the First-tier Tribunal Judge has not had due and proper regard to section 117B(5) of the Nationality, Immigration and Asylum Act 2002. She also very fairly and properly acknowledges that she is not able to suggest that such an omission is anything other than material to the overall balancing exercise under Article 8, and to that extent she acknowledges that she is in difficulty in resisting the Secretary of State's challenge.

15. In those circumstances it is unnecessary for me to explore in any greater detail the substance of the decision in respect of Article 8: suffice it to say it is acknowledged, and I accept, that the Judge erred in law.

16. It follows that the decision of the First-tier Tribunal Judge must be set aside and requires to be re-made.

Remaking the decision in the appeal

17. After a brief discussion with the representatives it was common ground that it was possible to re-make the decision on the basis of the documentary evidence that has been filed in this appeal, the primary findings of fact made by the First-tier Tribunal Judge, and the submissions of the representatives – without the need to hear further oral evidence. I heard submissions accordingly.

18. In the circumstances of my reasoning and conclusion in respect of 'error of law' under the Immigration Rules I find that the appeal under the Rules must be dismissed. However the appeal under Article 8 requires further consideration.

19. The Appellant's case under Article 8 is based on his private life. Whilst, in the usual way, he has made acquaintances and formed friendships whilst studying in the UK, it is not apparent that there is anything unusual or particularly compelling about such matters in themselves. That is not to disregard them, but to observe that they are not favourably determinative; nonetheless in the overall balance I have accorded some favourable weight to the significant numbers of supporting letters from friends that speak fondly of the Appellant in personal terms, and appreciatively about him in terms of his dedication to his craft.

20. However, the particular matters in this case that set the Appellant's case apart from the circumstances of so many other students who might seek to remain in the UK beyond the period of their studies, is the essentially vocational nature of the Appellant's studies, and the inability to pursue that vocation in the country of his nationality.

21. In this context I note in particular the following matters:

(i) The Appellant's parents describe the Appellant as demonstrating early talent at the age of 4 by imitating various singers' voices and choreographies; in kindergarten he would take key roles in performances put on for parents; and from an early age expressed a desire to be an actor.

(ii) The Appellant has studied acting from the age of 11, attending London Academy of Music and Dramatic Art (LAMDA) courses in Singapore.

(iii) In 2008 the Appellant attended a 6 months Foundation Course in Acting at The Oxford School of Drama in Woodstock in the UK.

(iv) In 2009 he returned to the UK for a three-month course at the London Academy of Music and Dramatic Art.

(v) The Appellant's Tier 4 (General) Student Visa was granted in order for him to study a BA (Honours) degree course in Professional Acting at LAMDA, which he completed in July 2014. This is an extremely competitive course: the Appellant suggests that out of 4000 applicants only 28 are successful.

(v) The Principal of LAMDA, Ms Joanna Read, has written in support of the Appellant stating him to be "*a hard-working industrious student*" and to have "*the potential for a sustainable career as an actor in the UK and to succeed in his profession*".

(vi) One of the teachers on his course, Ms Judith Phillips, writes that the Appellant is a "*committed person, with a strong desire to pursue his career in acting*", in addition to referring to "*his dreams as an actor*", and his hard work "*to fulfil his aim*".

(vii) There is evidence of limited scope for the Appellant to pursue an acting career in Singapore. The focus is in an Eastern audience, and insofar as more Western productions might be put on they are performed in 'Singlish' with Asian actors being preferred.

22. In my judgement it is clear that there is a powerful vocational element to the Appellant's wish to pursue an acting career: the desire to act is an important aspect of his identity, a defining characteristic as to who he is. He described acting in his own words as "*my passion which has consumed me for most of my life*".

23. I accept that he has pursued his vocation for as long as he can remember, from early childhood to the present. I also accept that he has done so with a focus on the English language and theatre as it is performed in the West. I accept that he has no realistic opportunities to pursue his acting dreams in Singapore. Accordingly the removal of the Appellant in consequence of the Respondent's decision would constitute a grave interference with that aspect of the Appellant's identity by which he fundamentally seeks to define himself, and around which he has shaped the rest of his life.

24. There is a further unusual element in this appeal. The Appellant is not by origin Singaporean. He came to reside in that country by reason of his parents' temporary relocation, and only acquired citizenship as recently as 2008. When the Appellant reached the age of 18 because he was the child of someone with Singapore residence he was required to undertake military service; upon completion of his service he was offered citizenship on the condition that he renounce his Serbian citizenship; it appears that he opted for this citizenship as he thought there would be fewer travel restrictions for a national of Singapore compared to a national of Serbia. Whilst it cannot be said that the Appellant does not have connections in Singapore, in my judgement he cannot be said to be a 'patrial' - in the sense of 'belonging' to Singapore. Indeed it is to be noted that after attending a short course in the UK in

early 2009 he left for Dubai to reside with his parents for about 2½ years until returning to the UK in September 2011 as a Tier 4 student migrant. The Appellant has not lived in Singapore since 2008 – leaving shortly after acquiring citizenship.

25. Whilst this 'nationality profile' is not in any way determinative, in my judgement it is nonetheless a reasonably significant factor that adds weight favourable to the Appellant in the overall proportionality balance. The Appellant is to some extent rootless, and as such it is perhaps not surprising that he feels a particular bond and affinity with the UK where he has not only enjoyed the opportunity of pursuing his vocational studies, but has been able to form friendships with like-minded persons at the same time as exploring for the first time his independence. It is also to be noted that although the Appellant was educated in Singapore he attended schools with a British curriculum, learned English from a young age, and sat exams set by UK examination boards. In any event, the Appellant effectively finds himself a national of a country that is unable to support him in his vocational endeavour.

26. In all such circumstances I have little hesitation in answering the first two **Razgar** questions in the Appellant's favour. There is no issue between the parties in respect of the third and fourth **Razgar** questions.

27. In respect of the fifth **Razgar** question – proportionality - I have had regard to Part 5A of the Nationality, Immigration and Asylum Act 2002. I approach the 'public interest considerations' under section 117B on the basis that no particular consideration is determinative, and that the listed considerations are not exhaustive of the factors that may be relevant in any particular case. Pursuant to section 117B(1) I take as a starting point that the maintenance of effective immigration control is in the public interest – and in particular by the consistent application of a published set of Rules.

28. The Appellant is able to speak English (section 117B(2)); given also that he has had an education that is essentially English in nature, and is steeped in the cultural heritage of English theatre, there is no obstacle to integration. Indeed the supporting letters indicate a very high level of integration has already been achieved.

29. There does not appear to have been any issue raised in respect of the Appellant's financial independence. Whilst studying in the UK he has been supported primarily by his parents with remittances from Dubai – though he has also worked part-time in the UK. His mother attended the hearing before the First-tier Tribunal and gave evidence in support of the appeal; she was found to be an entirely credible witness. It is part of her evidence – and the written evidence of the Appellant's father – that they are prepared to continue to support him, and are financially able to provide

additional funding over and above the regular monthly remittances in the event of any particular need. Both work in the construction industry in senior positions in Dubai and there is on file supporting evidence of their financial circumstances. I am satisfied that the Appellant is financially independent (section 117B(3)).

30. The private life that the Appellant has established has been at a time when he has been present in the UK lawfully, but precariously (section 117B(4)(5)).

31. In my judgement the public interest is outweighed on the facts of this particular case by the extent and gravity of the interference with the Appellant's private life in the event that he is required to leave the UK. It should be understood that this is not a finding that anybody wishing to pursue a career in theatre, or otherwise as an actor, should be able to resist removal. This case is determined on its specific facts by reference to: the very particular significance to the Appellant of his wish to pursue a career in acting; in combination with the very unusual circumstance of the limited nature of association with his country of origin including that it does not provide a meaningful opportunity to him to give expression to the calling that is an integral part of his identity; and supported by extensive evidence in respect of his potential professional capabilities, and – of less though still positive significance – his social circle.

32. I conclude that the Appellant's removal from the UK in consequence of the Respondent's decision would constitute a disproportionate interference with his Article 8 rights. The appeal is allowed accordingly.

Notice of Decision

33. The decision of the First-tier Tribunal contained a material error of law and is set aside.

34. I remake the decision in the appeal. The appeal is allowed.

35. No anonymity order is sought or made.

Signed Date: 13 May 2016

Deputy Upper Tribunal Judge I A Lewis

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid I have considered making a fee award. I have decided to make a whole fee award of £140: the Appellant's application was meritorious and he has appropriately pursued his appeal to a favourable conclusion.

(Although I have determined the substance of the appeal in my capacity as a Deputy Upper Tribunal Judge, I make the Fee Award in my capacity as a First-tier Tribunal Judge.)

Signed Date: 13 May 2016

First-tier Tribunal Judge I A Lewis