Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number:**

IA/39626/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons**
On 17 June 2014	**Promulgated on 02 December 2014**

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

Secretary of State for the Home Department

Appellant

and

Monika Basra
(Anonymity order not made)

Respondent

Representation
For the Appellant: Mr. P. Duffy, Home Office Presenting Officer.
For the Respondent: Mr. Z. Arai of ARA Immigration Services Ltd.

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Y. J. Jones promulgated on 28 March 2014 allowing Ms Basra's appeal against the Secretary of State's decision dated 27 September 2013 to refuse to vary leave to remain and to remove her from the UK.

2. Although before me the Secretary of State is the appellant and Ms Basra is the respondent, for the sake of consistency with the proceedings before the First-tier Tribunal I shall hereafter refer to Ms

Basra as the Appellant and the Secretary of State as the Respondent.

Background

3. The Appellant is a national of India born on 19 July 1989.

4. The Appellant's biological father separated from the Appellant's mother in 1995, and the Appellant has had no direct contact with him since 2000, although it was not until May 2010, that the Appellant's parents were formally divorced. The Appellant lived with her mother and two younger brothers until she came to the UK, arriving on 21 July 2010 and entering pursuant to a Tier 4 student visa valid until 30 August 2013.

5. The Appellant's mother had formed a new relationship with Mr Jagdish Lal, a British citizen (having become naturalised on 10 December 2001): they met in India in October 2009 and became engaged on 30 October 2009; they were married in India on 13 October 2010. Mr Lal began to provide financial support for the Appellant's mother and her family from the time of their engagement. On 1 November 2011 the Appellant's mother and brothers entered the UK pursuant to entry clearances for the purposes of settlement obtained on the basis of the Appellant's mother's marital relationship with Mr Lal. In due course, on 4 and 5 March 2014, the Appellant's mother and brothers were granted indefinite leave to remain. It is said that the family home in India has been sold.

6. The Appellant has resided in the UK with her mother and siblings, and her stepfather since her mother's entry to the UK.

7. The Appellant attended to her studies pursuant to the basis of her entry clearance and was awarded a BA in Business Management from the University of Sunderland in September 2013 (having pursued a course at the university's London campus). The Appellant was financially supported through her studies by her stepfather.

8. On 27 August 2013 the Appellant applied for leave to remain in the UK relying on Article 8 of the ECHR with reference to the presence of her mother, brothers and stepfather in the UK: at that time they had not obtained indefinite leave to remain but their

intention to seek such leave was asserted. (See representatives' letter in support of the application dated 27 August 2013.)

9. The Appellant's application was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 27 September 2013, and a decision to refuse variation of leave to remain and to remove the Appellant in consequence was made by way of a Notice of Immigration Decision also dated 27 September 2013. The Respondent's decision was taken with reference to paragraph 276ADE of the Immigration Rules; surprisingly, given the nature of the application, no reference was made in the RFRL to the circumstance of the Appellant residing with her family in the UK.

10. The Appellant appealed to the IAC. The First-tier Tribunal Judge allowed the Appellant's appeal under the Immigration Rules for reasons set out in his determination. Having allowed the appeal under the Rules the Judge considered it unnecessary to consider Article 8 of the ECHR (determination at paragraph 32).

11. The Respondent sought permission to appeal which was granted by First-tier Tribunal Judge Frankish on 8 May 2014.

Consideration: Error of Law

12. In circumstances where the Appellant did not meet variously the time or age requirements of paragraphs 276ADE(iii), (iv), and (v), the First-tier Tribunal Judge correctly identified that paragraph 276ADE(vi) was in issue: (see determination at paragraphs 25–26).

13. Pursuant to paragraph 276ADE(vi) the Appellant was required to demonstrate that at the date of application, whilst being both over 18 years of age and having lived continuously in the UK for less than 20 years, she "*has no ties (including social, cultural or family) with the country to which she would have to go if required to leave the UK*". The relevant country being the destination of removal and being the country of the Appellant's nationality, is India.

14. The meaning of 'no ties' has been the subject of consideration by the Upper Tribunal. In **Ogundimu (Article 8 – new rules) Nigeria [2013] UKUT 00060 (IAC)** the UT considered paragraph 399A of the Rules where the same wording – "*no ties (including social, cultural or family) with the country to which he would have to go*" – appears. Paragraph 4 of headnote is in these terms:

> "*The natural and ordinary meaning of the word 'ties' in paragraph 399A of the Immigration Rules imports a concept*

involving something more than merely remote or abstract links to the country of proposed deportation or removal. It involves there being a connection to life in that country. Consideration of whether a person has 'no ties' to such a country must involve a rounded assessment of all of the relevant circumstances and is not to be limited to 'social, cultural and family' circumstances".

15. See further in this context paragraphs 119-25 of **Ogundimu**. The use of the same wording in paragraph 276ADE of the Rules is expressly recognised in **Ogundimu**: see paragraph 122. I note in particular the following passages from paragraphs 123 and 125:

"*The natural and ordinary meaning of the word 'ties' imports, we think, a concept involving something more than merely remote and abstract links to the country of proposed deportation or removal. It involves there being a continued connection to life in that country; something that ties a claimant to his or her country of origin. If this were not the case then it would appear that a person's nationality of the country of proposed deportation could of itself lead to a failure to meet the requirements of the rule. This would render the application of the rule, given the context within which it operates, entirely meaningless.*" And –

"*Whilst each case turns on its own facts, circumstances relevant to the assessment of whether a person has ties to the country to which they would have to go if they were required to leave the United Kingdom must include, but are not limited to: the length of time a person has spent in the country to which he would have to go if he were required to leave the United Kingdom, the age that the person left that country, the exposure that person has had to the cultural norms of that country, whether that person speaks the language of the country, the extent of the family and friends that person has in the country to which he is being deported or removed and the quality of the relationships that person has with those friends and family members.*"

16. The First-tier Tribunal Judge made no reference to the decision in **Ogundimu**, and his determination does not otherwise suggest that he had regard to it, far less applied its guiding principles. Indeed the Judge's consideration appears to be confined to the Appellant's proximity or otherwise to family members still residing in India: see paragraph 29. It is not apparent how the Judge's conclusion in respect of the unavailability of accommodation with extended family members informed his conclusion - stated at paragraph 30 and 31 - that the Appellant had no social or cultural ties with India.

17. Very fairly and properly, Mr Arain recognised and acknowledged this error on the part of the First-tier Tribunal, and indeed acknowledged that the Appellant was in difficulties in demonstrating that she satisfied the Rules in this regard. It could not seriously be maintained following an absence of only some four years, and where family members continued to live in India (albeit not reasonably being in a position to provide the Appellant with accommodation), that the Appellant had no social or cultural ties with her country of nationality. The relocation of her siblings, and mother did not act to sever such ties as the Appellant had in a personal capacity having lived and interacted in India from her birth up until she entered the UK at the age of 21.

18. Accordingly, it was common ground that the Judge had materially erred in law in misdirecting himself as to the meaning of the Immigration Rules and that his decision required to be set aside. I endorse this common position, and set aside the decision of the First-tier Tribunal accordingly.

Re-making the decision

19. As noted above, Mr Arain conceded that the Appellant could not succeed under paragraph 276ADE(vi). It was not contended that there was any other provision under the Rules that could avail the Appellant. Accordingly, it was the Appellant's position that the only live issue for consideration in the remaking of the decision in the appeal was the Appellant's reliance on Article 8 of the ECHR. Both representatives were content that this was a matter suitable to be considered before the Upper Tribunal without receiving further evidence, on the basis of the findings of primary fact made by the First-tier Tribunal Judge, and their further oral submissions. (Those submissions have been noted in my record of proceedings which is on file.)

20. As noted above, it is common ground before me that the Appellant does not meet the requirements of paragraph 276ADE in respect of private life, or Appendix FM in respect of family life.

21. Whilst the Rules are intended to be Article 8 compliant and to give expression to the Executive's view on where the balance between individual rights and public interest is to be struck, they are not a complete code. In **Gulshan (Article 8 – new Rules – correct approach) [2013] UKUT 00640 (IAC)** and **Nagre [2013] EWHC 720 (Admin)**, guidance was given to the effect that where an Appellant does not meet the requirements of the Rules the Tribunal must turn its mind to the question whether there is good reason to give consideration to the case beyond the express wording of the Rules, mindful that if so it will be necessary to explore whether

there are exceptional circumstances which would result in unjustifiably harsh consequences if the Appellant were removed from the UK. Whilst some disapproval of the 'intermediate step' referred to in **Nagre** has now been expressed in **MM (Lebanon) [2014] EWCA Civ 985** (paragraph 128), recent case law – including **Nagre** and **Shahzad [2014] UKUT 85 (IAC)** (which effectively followed **Gulshan**) – is not disapproved (paragraphs 87, 88, and 131). The necessity remains "*to identify other non-standard and particular features of the case of a compelling nature to show that removal would be unjustifiably harsh*".

22. Mr Duffy essentially argued that there was nothing in the Appellant's circumstances not adequately recognised and accounted for under the Rules that warranted taking an exceptional approach to relax the usual requirements of immigration control. He emphasised that the Appellant was now 25 years old, and as such was no longer a child, that she had come to the UK without her mother and siblings as a student and had been able to relocate, and adapt – she had demonstrated resourceful us in this regard. She could, in his submission, 'stand on her own two feet' as indeed many people of her age did. Her mother's decision to relocate to the UK with the Appellant's siblings was essentially a matter of family choice. The Appellant's removal in all of the circumstances would not be a disproportionate interference with either private or family life.

23. Mr Arain emphasised that the Appellant belonged to a close knit family – the mother having looked after the children on her own since 1995 when the Appellant's father had left, exercising sole responsibility for the children and pursuing two jobs in the absence of financial support from the children's father. Although the Appellant was now 25 she was entirely dependent on the family now living as a unit in the UK. She wished to continue with further studies and required ongoing support both financially and emotionally. In contrast, she could not access such support from family members in India: the extended family had not supported the Appellant's mother when she was bringing up the children on her own and it was unlikely that they would now seek to support the Appellant; in effect the Appellant had nobody to turn to in India for financial support or for any other help. Whilst it was accepted that in a modern India some young women, particularly in large urban centres, lived independently of their families and on their own, it was more than likely given the Appellant's age and relative lack of experience that she would struggle to establish herself independently without at the very least a period of transitional support from her family. The period for which she had been in the UK without her mother was relatively limited and she had in any event, during that period had the support of her stepfather.

24. The First-tier Tribunal Judge made a primary finding of fact, unchallenged before me, that the Appellant is still dependent upon her mother and stepfather for accommodation and financial support (determination at paragraph 29). In my judgement this finding is entirely consistent with the submission made by Mr Arian that the family history, is such that the Appellant remains emotionally close to her mother and siblings, and notwithstanding her age and her pursuit of studies is still very much a child of the family. This is a significant aspect of both the Appellant's family and private life.

25. Further, in this context and generally, I consider the Appellant's family's relocation to the UK and her residing with them since their arrival - thereby resuming and continuing the family unit as it had previously existed in India - and the Appellant's particular emotional and financial dependence on the family unit, are not circumstances accorded any particular weight under the provisions of paragraph 276ADE.

26. In respect of the five **Razgar** questions, there is no real issue that the first and second questions are to be answered in the Appellant's favour. She has established both a family and private life in the UK and her removal would represent a significant interference therewith. Further, there is no issue between the parties in respect of the third and fourth **Razgar** questions.

27. As regards the fifth question, proportionality, I take into account the public interest in maintaining effective immigration control through the consistent application of published Rules. Although the hearing in this appeal predates the coming into force of the amendments to the Nationality, Immigration and Asylum Act 2002 introduced by the Immigration Act 2014, I have noted and had regard to the public interest considerations pursuant to sections 117A-117D, and specifically section 117B. It is not disputed that the Appellant can speak English, and indeed she has obtained a BA degree (IIi) in Business Management from the University of Sunderland. It is not disputed that the Appellant has been financially independent through her studies and has the continuing support by way of finance and accommodation from her family in the UK. The Appellant has at all material times complied with the requirements of immigration controls and has at no point been unlawfully present in the UK. Although it might be said that there has been a degree of precariousness in her immigration position, by virtue of being subjected to limited leave, ultimately in the overall context of this case I do not consider that this so significantly undermines the weight to be accorded to her family and private life that it tips the proportionality balance against her.

28. In my judgement there are otherwise no countervailing factors in this particular appeal that are adverse to the Appellant by reference to her conduct, the conduct of her family, or the imperative of maintaining effective control.

29. Balancing the public interest against the Appellant's particular circumstances – and indeed the respective associated private / family lives of her mother and siblings (and to a lesser extent her stepfather) - I find that relocation of the Appellant's family to the UK from India and her resding with them in the UK in continuation of the family life she has known throughout her life up to coming to study here, is a non-standard and particular feature not recognised in the Rules and is of a compelling nature such that the impact on the private life established by the Appellant would be unduly harsh if she were to be removed in consequence of the Respondent's decision. The proportionality balance favours the Appellant.

30. Accordingly I find that the removal of the Appellant in consequence of the Respondent's decision would involve a disproportionate breach of her Article 8 rights.

Notice of Decision

31. The decision of the First-tier Tribunal Judge contained an error of law and is set aside. I re-make the decision in the appeal.

32. The appeal is allowed.

Deputy Judge of the Upper Tribunal I. A. Lewis 30 November 2014