Upper Tribunal
(Immigration and Asylum Chamber)

BN (Article 8 – Post Study Work) Kenya [2010] UKUT 162 (IAC)

THE IMMIGRATION ACTS

Heard at Field House

On 2 February 2010

Before

SENIOR IMMIGRATION JUDGE STOREY

SENIOR IMMIGRATION JUDGE WARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

BN

Respondent

Representation

For the Appellant: Mr C Avery, Home Office Presenting Officer

For the Respondent: Mr E Nicholson, Counsel, instructed by Mulberry Finch

i. In the context of a Post Study Work appeal based on the right to respect for private life, the balancing of all relevant factors of significance cannot be confined to consideration of the appellant's ability to self-maintain and the potential to misunderstand requirements of the Immigration Rules and corresponding Policy Guidance.

ii. Sullivan J's observations in R (on the application of Forrester) v SSHD [2008] EWHC 2307 (Admin) were not meant to enunciate a general proposition about Immigration Rules that are in non-discretionary form or to imply a view that any policy fitting this description could have no public interest weighting.

iii. The decision in OA (Nigeria) [2008] EWCA Civ 82 was fact-sensitive and in any event affords little assistance when considering the case of a person who has applied, not to complete studies, but to switch to employment, in circumstances where she could only expect to be able to do so if she met the requirements of the Immigration Rules.

DETERMINATION AND REASONS

1. The respondent (hereafter “claimant”) is a citizen of Kenya. In a determination notified on 13 May 2008 Immigration Judge (IJ) Gibb allowed her appeal against a decision made by the Secretary of State on 27 February 2009 refusing to grant her further leave to remain. She had applied on 23 January 2009 for leave as a Tier 1 (Post-Study Work) [hereafter “PSW”] Migrant.

2. The only basis the Secretary of State gave for refusing her was that she had failed to show she had the requisite level of funds (£800) in her bank account for the relevant period for three months immediately preceding 23 January 2009.

3. The IJ considered whether the claimant could succeed under para 245Z of HC 395 as amended on the strength of having been able to show she had consistently had £800 or more in her bank account since 21 November 2008. He concluded she could not. He went on, however, to allow the appeal on Article 8 grounds. It is appropriate to quote from his determination at some length [before him the claimant was, of course, the appellant].

“17. I have decided to allow the appeal on Article 8 grounds because the inflexible application of a Rule of this sort amounts to a disproportionate interference with the appellant’s right to respect for her private life. The appellant has a perfect record in relation to her immigration history and her studies. She has obtained permanent employment and is perfectly able to maintain herself. It was only because of her failure to realise the exact nature of the new requirements until November 2008 that she was not able to meet the three month requirement, and by that stage it was too late, and there was nothing that could have been done given the date of expiry of her leave.

18. The injustice in this case arises from Rules in which any opportunity for discretion has been removed. This kind of situation cries out for somebody to take a sensible and commonsense approach, looking at the overall aim of the Rule in question. As was clear at the hearing, however, any opportunity to exercise discretion has been removed at all stages of the system. The civil servants taking such decisions have had any power that they once had to exercise such discretion taken away. Similarly the Home Office Presenting Officer had no alternative but to adopt the position that she did. Only in very rare cases where an MP intervenes and the matter reaches a very high level is there some chance of discretion being exercised in a situation like this. In addition I have no power to introduce a discretionary element in the decision under the Immigration Rules, where there is none. For a number of years recommendations by Immigration Judges, where appeals have been dismissed, have not been followed as a matter of policy. Dismissing the appeal under the Immigration Rules with a recommendation that discretion should be exercised to depart from the Rules in this particular case would therefore be unlikely to make any difference.

19. If there were some opportunity for the appellant to make a further in-country application, once she had the required three month balance, then such a requirement would not be disproportionate. The possibility for a further in-country application does not, however exist. This is because the appellant’s leave expired at the end of January and the first date by which she had the three month minimum balance was 21 February 2009. Any further in-country application would therefore be automatically refused, again with no discretion to the decision maker to do anything else.

20. As a result of this refusal, and of this appeal being dismissed, the appellant would become an overstayer. This would have a number of possible adverse future consequences, and would blot her perfect immigration history. Although her leave has been extended during the appeal process it is not open to her to use that extension of leave for the purpose of making any further application. Any overstaying is regarded as a serious matter in any future application, whether in-country or out of

country. Any subsequent in-country application, which would be automatically refused, would not attract her right of appeal.

21. The appellant would face considerable disruption to her life in having to leave the country and make an application for entry clearance to return. The position in relation to her job is uncertain. Even if she were given a period of unpaid leave, which would obviously be inconvenient for the university as well as for the appellant, she would face the difficulty of having to find another job in Kenya, and ensure that she had the required £2,800 balance for a three month period. All of this would have to be accomplished within the twelve month deadline which would expire on 12 December 2009. The task might not be impossible, but it would certainly be extremely difficult, and would amount to huge inconvenience and expense for the appellant.

22. The respondent did recognise that the sudden introduction of these Rules could cause unfairness, but the appellant's application was made some time after the transitional arrangements, which waived the three month requirement, were withdrawn

23. Sullivan J (as he then was) in R (on the application of Forrester) v SSHD [2008] EWHC 2307 (Admin) was considering the situation where a marriage settlement application was rejected due to a bounced cheque, and was then refused, when resubmitted, on the grounds that it was out of time and the applicant had become an overstayer. The Home Office refused to exercise discretion in that applicant's favour. Sullivan J said the following:

"This is a classic example of a thoroughly unreasonable and disproportionate, inflexible, application of a policy, without the slightest regard for the facts of the case or indeed elementary common sense and humanity. Such an approach diminishes rather than encourages respect for the policy in question."

24. I adopt those words, with respect. This is a similar situation. The current direction in the Immigration Rules is towards micro-management of every aspect. In the past the rules would say that a person had to have enough funds. Now they specify an exact figure, and also specify in exact terms the evidence that must be shown. Discretion has been removed from the decision-maker and from the appeal stage. The jurisdictional boundary for a statutory appeal, of not straying into the area of discretion outside the rules, was one thing when the rules were general, but it is quite another when they are so specific. Now a matter such as a balance falling from £800 to £799 for one day in a three month period becomes a departure from the rules. What is needed in any decision making process is for a person to be able to exercise discretion in a sensible way in the application of any set of rules to the facts of individual cases. If the initial decision-maker is not allowed to do it, neither is the Judge at appeal, neither is a decision-maker looking at the judge's recommendation, and neither is a decision-maker looking at a further application, then the only room for common sense to return is through a few very senior civil servants or Ministers, or a High Court Judge. Most people cannot hope to get their cases considered at this level, and much unfairness will result in individual cases.

25. It is for these reasons that I have decided, after not a little hesitation to turn to Article 8 as the only way out of this dilemma, and the only way to produce a fair and humane result. It has not been argued that the appellant has any relationships in the UK that amount to family life. The issue here is that all applicants have the right to be treated as people, and any decision making seem must retain a certain amount of common sense, humanity, and flexibility in order to recognise that those affected by the decisions made are human beings, and have the right to be respected as such. In the circumstances this refusal, despite the fact that it complied with the strict requirements of the Immigration Rules, and the guidance, did not treat the appellant as a person worthy of respect. It is wrong for commonsense and humanity to be banished from any decision-making process.

26. The respondent is proposing to remove the appellant and this is therefore, also, an expulsion case. Considering the five questions in Razgar I find the proposed removal would be an interference with the appellant's right to respect for private life. It would have consequences of such gravity as to engage Article 8. This is because of the consequences for future in country or out of country applications set out above, and because the application involves the appellant's future work experience and career prospects. The interference is in accordance with the law. It is not necessary in a democratic society because it is disproportionate to the public end sought to be achieved. A recognition that applicants who clearly are able to maintain themselves but have misunderstood the detailed evidential requirements should have discretion exercised in their favour would not damage immigration control in any way.

Decision

27. The appeal is allowed on human rights grounds, with reference to Article 8 of the European Convention on Human Rights."

4. The Secretary of State successfully applied for an order for reconsideration, bringing the matter before us. When we heard the case on 2 February we sat of course as members of the Asylum and Immigration Tribunal. By virtue of legislative changes from 15 February 2010 all reconsiderations still undetermined became appeals before the Immigration & Asylum Chamber of the Upper Tribunal. Before us the Secretary of State is the appellant.

5. The appellant's grounds contended first that the IJ "had used the human rights legislation as a blunt instrument to defeat the removal of discretion in the Rules relating to Tier 1 migrants" whereas the House of Lords had held in Odelola [2009] UKHL 25 that it was open to the executive to make Immigration Rules that remove discretion. He had in effect exceeded his jurisdiction.

6. A second point made focused on the IJ's statement that the refusal decision constituted an interference with the claimant's right to respect for a private life having grave consequences, in particular "the consequences for future in country or out of country applications …". The grounds submitted that such consequences were irrelevant. They also maintained that the IJ was wrong to treat as a material factor the fact that the claimant was "worthy of respect". And finally they argued that the IJ gave insufficient reasons why the claimant's further work experience and career prospects were factors justifying allowance of the appeal on Article 8 grounds.

Submissions

7. On the excess of jurisdiction point Mr Avery for the appellant maintained that the IJ's reasoning betrayed a resolve to circumvent the will of Parliament expressed in Immigration Rules as could be seen from his reference to Article 8 as "the only way out of this dilemma". As to the IJ's reasoning in respect of Article 8, Mr Avery said that it was clearly inadequate. To say that allowing the claimant's appeal "would not damage immigration control in any way" was to set at nought the public interest side of the Article 8 balancing exercise without adequate explanation as to why. To treat Article 8 as a way round the Immigration Rules served to undermine these Rules. To attach weight to the claimant's future work and career prospects was unjustified since it was based on employment she had taken whilst a student. The IJ's reasoning was clearly contrary to the approach taken by the Tribunal in MM (Tier 1 PSW; Art 8; "private life") Zimbabwe [2009] UKAIT 00037.

8. Mr Nicholson in response argued that the Secretary of State was really doing no more than expressing annoyance and disagreement with an IJ decision. The IJ clearly had kept within his

jurisdiction; he made that clear at para 16. Odelola was not in point. Parliament had expressed its will not just through Immigration Rules but also through the Human Rights Act. Mr Nicholson further pointed out that the Secretary of State's criticisms wrongly implied that the Immigration Rules struck the Article 8 balance, whereas Huang [2002] UKHL made clear they did not. As regards the adequacy of reasons, the test was an exacting one. It was not suggested or shown that the IJ's decision was perverse or that his error was vital or crucial. The IJ had correctly directed himself in terms of the structured approach to Article 8 enjoined by Razgar [2005] UKHL.

9. Referring to Mr Avery's reliance on MM , it was significant, said Mr Nicholson, that the claimant had a much greater degree of integration than MM had, having completed two university courses. For the claimant to be deprived of the benefit of a favourable IJ decision would involve huge inconvenience and expense for her. She was plainly able to support herself. The claimant had not demonstrated how the public interest was served by an adverse decision. It was important to bear in mind the guidance given by the Court of Appeal in Miao [2006] EWCA Civ 75.

"12. The latter question was described by the Immigration Judge as involving the 'balancing exercise which is the essence of an assessment of proportionality', requiring him to 'accord due weight to the competing interests'. This may be right as far as it goes but it is not all. The assessment of proportionality is not a simple weighing of two cases against each other. It arises only when the claimant has established that he enjoyed a protected right which is threatened with violation: at that point the burden shifts to the state to prove that the involvement is nevertheless justified. To do this the state must show not only that the proposed step is lawful but that its objective is sufficiently important to justify limiting a basic right; that it is sensibly directed to that objective; and that it does not impair the right more than is necessary. The last of these criteria commonly requires an appraisal of the relative importance of the state's objective and the impact for the measure on the individual. When you have answered such questions you have struck the balance."

10. Even if the IJ made comments that might be read as an indictment of the Points Based System (PBS) as a whole or the Tier 1 PSW Rules, such comments, Mr Nicholson continued, were not integral to the reasoning given for allowing the appeal. He clearly envisaged that there may be cases when the Tier 1 PSW rules would not violate Article 8. Further, the current Rules did envisage that students could switch from student leave to long-term leave or leave in Tier 2 categories.

11. The IJ also gave a valid reason for declining to consider whether he could have achieved the practical result he clearly desired for this claimant by way of making an extra–statutory recommendation. What was said about that at para 23 was entirely accurate.

12. At the hearing the parties were also asked for more specific submissions on the relevance of OA (Nigeria) [2008] EWCA Civ 82 and MM . Mr Avery said the circumstances on OA were very different; it was about continuation of studies, not post-study work. MM clarified that work itself is not fundamental to the private life aspects of a Tier 1 case. Mr Nicholson submitted that OA demonstrated that the public interest in immigration control did not necessarily mean that students seeking extensions could not succeed. MM was much weaker on its facts than either OA or this case.

Our Assessment

13. Mr Nicholson is entirely right to emphasise the limits of the Tribunal's error of law jurisdiction. We are not to interfere with the findings made by an IJ unless they are vitiated by real errors of law. We also consider that Mr Nicholson is right in saying that there is no question that the IJ acted within his jurisdiction. Indeed, since Article 8 was raised as a ground of appeal it may well have given rise to

an error of law for him not to consider it: see s. 86(2)(a); s. 84(1)(c) of the Nationality, Immigration and Asylum Act 2002. We do not consider that the appellant can be blamed for not addressing Article 8 in the Reasons for Refusal Letter, since the claimant's application based itself solely on the Immigration Rules. But once Article 8 had been raised in the grounds of appeal, it was incumbent on the appellant at the hearing to explain why the Article 8 claim was resisted (if it was). However we consider that the appellant discharged that responsibility. The HOPO (Miss Shah) is recorded at paragraph 10 as submitting that it was not disproportionate to expect the claimant to leave the country and apply for entry clearance, particularly because her Article 8 claim was only based on private life.

14. All turns, therefore, on the legal efficacy of the IJ's treatment of Article 8. It is not suggested that the IJ was wrong to find that the right to respect for private life was engaged by the facts of this case, nor is there any specific challenge to his finding that the decision amounted to an interference with that right. The IJ accepted that the decision of the Secretary of State was "in accordance with the law" within the meaning of Article 8(2). Hence proportionality was the only issue.

15. Turning first to consider the IJ's treatment of the public interest side of the scales, the only specific reference he made to it was at the end of para 26 when he stated that:

"A recognition that applicants who clearly are able to maintain themselves but have misunderstood the detailed evidential requirements should have discretion exercised in their favour would not damage immigration control in any way."

16. The IJ's reference to discretion is careless since if a decision is contrary to a person's human rights, then s. 6 of the Human Rights Act, in conjunction with s. 86(2) of the 2002 Act imposes a duty on the Secretary of State not to proceed with it; and s. 86(2) imposes on an IJ a duty to allow the appeal; but since any conduct of the Article 8 balancing exercise entails matters of judgment, we shall assume the IJ meant only the latter.

17. Even so, this passage shows a grasp of the Article 8 balancing exercise which is at best tenuous. It does not equate (as Mr Avery appeared to argue) to a bald assertion that immigration control had no weight in Tier 1 cases. It confines what it says to applicants who (1) can maintain themselves; and (2) have misunderstood what was required of them by way of evidence. That said, (2) misrepresents the effect of the introduction of the Tier 1 PSW scheme. Precisely in order to make allowances for applicants having to adjust to the new requirements and have an opportunity to arrange their finances in time, the relevant Policy Guidance contained transitional provisions, which expired on 31 October 2008. All potential applicants have known since 30 June 2008 that from 1 November 2008 new requirements for funds were instead to apply. From that date on, ignorance of the law was and is no excuse. The IJ appeared to note this fact at para 22 but then promptly forgot it, relying instead on a generalisation treating misunderstanding of the relevant requirements as decisive for the issue of immigration control. Possibly he may have been justified in considering that this appellant's misunderstanding was particularly important (see para 8), but that is not what he did: he based himself on a sweeping generalisation about "applicants…who have misunderstood the detailed evidential requirements".

18. The passage also fails to recognise that the exercise he was required to undertake consisted of a balancing of all relevant factors of significance and that in any individual case ability to self-maintain and potential to misunderstand requirements of the Rules and Policy Guidance were not the only relevant factors.

19. Anticipating that the Tribunal might find para 26 troublesome, Mr Nicholson submitted that earlier in his determination the IJ had in fact given a further reason why the public interest considerations should not prevail which was within an IJ's remit in a merits-based appeal. So we turn to this. In essentials the IJ's view was that the relevant Immigration Rule (para 245Z) should not be considered to bear any or any significant public interest weight because its non-discretionary character created an inflexible application of Rules which inevitably resulted in "much unfairness" in individual cases. He had cited in support Sullivan J's observation in R (on the application of Forrester) v SSHD [2008] EWHC 2307 (Admin) which considered a situation where a marriage settlement application was rejected due to a bounced cheque causing the applicant to become an overstayer. Sullivan J's comments made reference to such a "thoroughly unreasonable and disproportionate inflexible application of a policy ..." as one diminishing rather than encouraging "respect" for the policy in question. It was legitimate, submitted Mr Nicholson, for the IJ to have adopted those observations in the different context of Tier 1 PSW.

20. We find it difficult to accept that the IJ was right to equate the situation arising when a person has an application refused for failing to produce payment in proper form with that arising when a person has failed to produce the required evidence needed to show he or she meets the substantive requirements of the relevant Rules. Nor do we think that Sullivan J meant to enunciate a general proposition about Immigration Rules that are in non-discretionary form. In any event, we cannot see that his Lordship's reference to "respect" for (governmental) policy was meant to imply that in his view any policy fitting this description could have no public interest weighting.

21. Mr Nicholson is right to point out that when considering the intention of Parliament and the need for the judiciary to respect that intention one should consider not simply the Immigration Rules but also the Human Rights Act (HRA) (and related provisions in the Immigration Acts), but, as the higher courts have repeatedly confirmed, the HRA reflects the principle of the separation of powers and does not empower the judiciary to usurp the will of Parliament. (Of course, the Immigration Rules are not primary legislation and so can, in principle be disapplied under the HRA, but that is not what this IJ sought to do or would have been justified in seeking to do). Mr Nicholson is right that Odelola does not in terms deal with the status of the Immigration Rules as an embodiment of the public interest; but their lordships do make clear that the Immigration Rules are to be seen as an expression of the will of the Executive acting through Parliament: in Lord Hoffman's words at para 6, "detailed statements by a minister of the Crown as how the Crown proposes to exercises its executive power to control immigration".

22. In short, the IJ's treatment of the public interest side of the Article 8 balancing exercise was myopic and failed to take account of relevant considerations.

23. We next examine the IJ's treatment of the other side of the balancing exercise. Once again we find fault, although here it consists not in a failure to take into account considerations so much as in the taking into account of irrelevant considerations. If one looks to see what factors he attached weight to, one can see four. One of these, the claimant's faultless educational record, we have no concerns about. It was properly seen as a relevant element of her private life claim. However, a further two are troubling and the other one at least raises questions. The first relates to her employment. That the IJ should see her work history in general as relevant is entirely understandable, but he appears to consider that her recent history was one of legitimate "permanent employment" (para 17). At para 7 he had noted that the claimant is: "now permanently employed on a permanent full-time basis, as an international operations manager by the same university where she obtained her two degrees. Her employment in this position started in October 2008".

24. What he failed to mention was that in her application dated 22 January 2009 when asked about her current immigration status, she described herself as a “student writing up a thesis”. And the further leave to remain she had been granted on 1 September 2008, as a student until 31 January 2009 was “subject to a restriction on employment and recourse to public funds”. Thus the claimant was not someone entitled during this period to undertake full-time employment on a permanent basis. We do not have enough information to decide whether her full-time employment was at all times or at any time outwith the terms of the conditions of her stay restricting her employment, since we do not know if or when she had a holiday period, nor do we know what were her hours of work (although we know she was awarded her degree on 2 December 2008). What, however, is clear is that she had no entitlement to permanent full-time employment and no expectation, as a student, that she could undertake employment other than as part of her studies in accordance with a restriction. The IJ effectively equated her employment position to that of someone who was entitled to such employment under the Immigration Rule or was settled. For the Immigration Judge, to consider it relevant in such circumstances that the claimant would risk losing her employment (see para 21) was improper. By the same token it was also improper of him to have attached weight to the “inconvenience” her cessation of employment would cause to her employer. An employer as much as an employee is required to comply with the Immigration Acts.

25. It may be that there is also a difficulty about another reason the IJ relied on – her ability to maintain herself. If she possessed this ability because of her earnings from full-time permanent employment, then arguably it should not have been taken into account without at least further exploration of her employment particulars.

26. There is a related difficulty with the fourth reason on which the IJ placed considerable reliance. He considered that since the claimant had been or would be denied a “further in-country application” she would become (upon dismissal of her current appeal) an overstayer, which would in turn have “possible adverse future consequences” for any subsequent application. However, what the IJ is here describing is the legal effect on any unsuccessful application of a failure to comply with the Immigration Rules. The claimant had no expectation that she would be able to continue to stay lawfully in the UK unless she met the requirements of the Immigration Rules. If, despite failure in her application and appeal she chose to remain in the UK as an overstayer, that would be her own choice. She would be in no different position than any other unsuccessful applicant. The IJ has totally forgotten, when conducting the Article 8 balancing exercise, that regard must be had to the extent of a person’s foreknowledge of immigration difficulties or precarious immigration status. This claimant has always known her stay in the UK as a student was limited and subject to restriction.

27. For the above reasons we find that the IJ materially erred in law.

28. We do not consider this a case where it would be appropriate to adjourn to hear or receive further evidence. There was no Rule 32 notice under the 2005 Procedure Rules and we have all the requisite evidence before us.

29. The only issue concerns Article 8. In considering the claimant’s claim, which is based on private life, we have regard to the case law cited earlier, in particular Miao, MM , and OA .

30. It is accepted that during her period of stay in the UK as a student the claimant has established a private life in the UK with some elements of significance. It is not in dispute that the refusal decision amounted to an interference with that right. It is common ground here that the decision was in accordance with the law for Article 8(2) purposes. The only issue concerns proportionality. Factors of relevance when considering the relative strength of the claimant’s private life ties are that she has

been in the UK since September 2004 (5 years 3 months), that during that period she has successfully completed two degrees, both at MA level and also established social relationships with fellow students and staff at Middlesex University and that since October 2008 she has worked there as an international operations manager. Up until her application for Tier 1 PSW she had been able to maintain herself without recourse to public funds.

31. The claimant failed in her application for PSW migrant status through being unable to show she had maintained the requisite level of funds during the relevant three months period immediately prior to her application in January 2009. It was accepted by the IJ (and we see no reason to call that that finding into question) that the claimant had failed to check what the new requirements were and so misunderstood the detailed evidential requirements. She is not, therefore, someone who knowingly or wilfully disregarded the requirements of the Rules or sought to flout them wilfully. That is a relevant consideration. Nevertheless, given that she was in the UK in a temporary capacity and was seeking to switch from being a student to a new work category which had not hitherto existed, she should have taken proper care to check the requirements of the new scheme. She had not been part of the scheme's predecessor, the International Graduates Scheme, which did envisage post-study work. Further, although she had formed ties through employment at the university, she must have known that any employment she took was subject to the restrictions on employment imposed as a condition of her student leave. Leaving aside the issue of whether in fact her university employment at all times was lawful, she could never have had any legitimate expectation of being able to stay lawfully in the UK unless she brought herself within the Immigration Rules.

32. It was said by the IJ that to expect the appellant to return to Kenya and make an entry clearance application from abroad would involve extreme difficulty and expense to her and inconvenience and expense to the university. But as already pointed out, her university has never had any lawful right to expect she could have been employed or could continue in employment except if permitted to do so by the Immigration Rules; far less that she could continue with them on a permanent basis. So far as concerns the claimant's private life, there is no reason on the evidence to consider she would be prevented from continuing to conduct her private life and form (or renew) social relationships back in Kenya. It is, of course, open to her to apply from abroad for Tier 1 PSW, but in weighing that factor it must be borne in mind that she is someone who has already had one opportunity, in-country, to apply under that scheme. Article 8 does not confer a right on applicants to have the negative outcome to an in-country application for work reversed simply because it is inconvenient for them to return to their country of origin, particularly when they were only admitted to the UK in order to study and subject to restrictions on employment.

33. We have had regard to the Court of Appeal judgment in OA (Nigeria). We note in that case that the principal concern of the court was that the refusal decision represented an effective disruption of the appellant's student life and that given the considerable financial investment the appellant had already made in completing those studies, the decision to refuse to vary leave to remain was disproportionate. In our view, the decision in that case was fact-sensitive and in any event affords little assistance when considering the case of a person who has applied, not to complete studies, but to switch to employment, in circumstances where she could only expect to be able to do so if she met the requirements of the Immigration Rules.

34. For the above reasons the Immigration Judge materially erred in law. We remake the decision as follows. The claimant's appeal is dismissed.

Signed

Senior Immigration Judge Storey

Judge of the Upper Tribunal