



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/01998/2013

THE IMMIGRATION ACTS

Heard at Field House
On 26th July 2013

Determination Promulgated
On 6th August 2013

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SATWIKI DEVERAKONDA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Hasan of Universal Solicitors
For the Respondent: Miss A Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge P J Clarke made following a hearing at Birmingham on 30th May 21013.

Background

2. The Appellant is a citizen of India born on 9th October 1985. She came to the UK to study on 14th January 2007 and completed her Masters in electronics from Staffordshire University in 2009. She was then issued a post-study work visa which expired in 2011.
3. The Appellant decided to pursue further studies at Kaplan Financial as a chartered finance analyst but this did not work out well and in October 2012 and she was admitted to the London School of Technology for a Level 7 Extended Diploma in Leadership and Management in Health and Social Care. The course finishes in October 2014.
4. She made an application on 28th September 2012 for leave to remain in the UK as a Tier 4 (General) Student Migrant under the points-based system but was refused on 9th January 2013 on maintenance grounds. She had to prove that she had the required maintenance fees of £1,600 plus course fees of £3,000 for the first year of her course. She was required to show that she was in possession of £1,600 for a consecutive 28 day period from 25th August 2012 to 21st September 2012. Between 25th August and 17th September her balance fell to £1,525.632. Accordingly her application was refused.

The Judge's Determination

5. The judge stated that the Appellant had requested that her appeal be dealt with on the papers and she paid the appropriate fee of £80. However her representatives wrote to the Tribunal on 13th March 2013 saying that the appeal had been listed for an oral hearing at Newport on 18th March 2013 and requesting that it be transferred to Taylor House. On 18th March the Tribunal issued a notice to the Appellant requiring a further fee of £60.
6. The judge said that there appeared to have been no attempt to pay the £60 and he assumed that she no longer wished to have an oral hearing. He therefore proceeded to deal with the appeal on the papers before him. He found that the Appellant was not in a position to meet the requirements of the Immigration Rules and he considered whether the appeal ought to be allowed on Article 8 grounds. He considered CBS (PBS available - Article 8) Brazil [2010] UKUT 305 but distinguished the Appellant's case from the Appellant in CDS and dismissed the appeal on human rights grounds.

The Grounds of Application

7. The Appellant sought permission to appeal on the grounds that the Appellant had in fact paid the additional £60 and the appeal should have been listed for an oral hearing. Since the application the Appellant had maintained a sufficient balance in her account and she had spent a substantial amount of money time and effort on her education. She had never breached any Immigration Rule and submitted that the judge made an error in his assessment of Article 8.
8. Permission to appeal was granted on Article 8 grounds only by Judge Keene on 25th June 2013.

The Hearing

9. Prior to the hearing the Appellant produced evidence that she had paid the fee for an oral hearing on 22nd March 2013. Miss Everett accepted that the judge had therefore made a mistake of fact, albeit through no fault of his own, and the Appellant had therefore been deprived of an oral hearing for which she had paid.
10. The decision is set aside and must be remade. It would appear that there has been an administrative error on the part of the Tribunal in not recording that this appeal should have been listed for an oral hearing.

Remaking the decision

11. Mr Hassan confirmed that the Appellant was not in a position to meet the requirements of the Rules but submitted that the appeal should be allowed on Article 8 grounds. The facts of this matter are that the Appellant's father died in November 2012, having been ill for some time, and during the preceding period the Appellant's mother lost track of the moneys in the account and inadvertently withdrew more money than she should have done without realising the consequences it would have for her daughter.
12. He submitted that the Appellant had been here for six and a half years had never relied on public funds and never would since the evidence showed that since that time the account had had adequate funds. The Appellant had paid £3,000 to the college and she wished to be given the opportunity to complete her studies.
13. Miss Everett said that she had considerable sympathy for the Appellant for the loss of her father and the effect which this had had on her but submitted that the removal decision was proportionate and that the Appellant's case was distinguishable from that in CDS (Brazil) who had succeeded because there had been a change in the Rules in that case which meant that the Appellant in that case, who had invested highly in her course, was no longer in a position to meet the requirements. In this case the Appellant had not been disadvantaged by any rule change and was undertaking a course of a shorter duration and had the option of making an application from India to return to the UK to finish her studies.

Findings and Conclusions

14. It is common ground that the Appellant cannot succeed under the Rules.
15. With respect to Article 8, she has been in the UK since 2007 and clearly has established some private life here as a student and has no doubt made friends and contacts here during the course of her studies.
16. The decision will interfere with her rights to continue her course but is lawful since she cannot meet the requirements of the Rules and is in pursuit of a legitimate aim.
17. It is also proportionate. The Appellant has built up private life deserving of respect during her time in the UK but she was admitted for a temporary purpose which gives no right to any extension of stay and in the expectation that she will return to the country of her nationality. She has not been disadvantaged by any action on the part of the Respondent. It is true that the unchallenged evidence is that her funds fell short by a small amount in difficult circumstances for the Appellant and due to matters entirely beyond her control. That in itself however does not establish that the decision to remove her is unlawful. She has completed the course for which she was originally granted entry and if she wants to complete a second course she has the opportunity of making an application for entry clearance for that purpose.

Decision

18. The original judge erred in law and his decision is set aside. It is remade as follows. The Appellant's appeal is dismissed under the Rules and on Article 8 grounds.

Signed

Date

Upper Tribunal Judge Taylor