



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/09566/2013

THE IMMIGRATION ACTS

Heard at Field House
On 21 August 2013
Prepared 21 August 2013

Determination Promulgated
On 27 August 2013

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

DR REBECCA LYNNE STEWART

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss R Bagral, of Counsel instructed by Manches LLP
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of America, born on 14 January 1983 appeals, with permission, against a decision of Judge of the First-tier Tribunal Holder who in a determination promulgated on 21 June 2013 dismissed the appellant's appeal against a decision of the Secretary of State made on 14 March 2013. The appellant, who had

lived in Britain as a student between September 2005 and 31 December 2010 and thereafter as a Tier 1 (Post-Study) Worker had applied on 7 February 2013 for leave to remain as a Tier 1 (Entrepreneur) Migrant under the points-based system.

2. The refusal, set out in a letter of 14 March 2013 accepted, under "Appendix A: Attributes" that the appellant had provided sufficient evidence to demonstrate that she did have access to the £50,000 required. However she did not receive any points under that section of the Appendix as it was not accepted that she was engaged in relevant business activity in an occupation which appeared on the list of occupations skilled to National Qualifications Framework Level 4 or above. It was however accepted that she was registered at HM Revenue and Customs, had registered a new business and was a director of that business. It was stated that although she had provided a job title that was listed in the appropriate Appendix the only evidence she had submitted to demonstrate she was active in an occupation as part of her business was a contract to work on the morning of 14 February 2013. The appellant was not awarded points for funds held in regulated financial institutions or that they are disposable in the United Kingdom because, the writer of the letter of refusal wrote:-

"We have established that you have not demonstrated that you are eligible to be awarded points under provision (d) of Table 4 of Appendix A of the Immigration Rules having access to £50,000."

3. The judge found that the appellant was engaged in business activity as claimed. The judge stated, in paragraph 14 of the determination that this was demonstrated by advertising for the appellant's business, a document outlining the business and other documents setting out various agreements between that business and other organisations for which services were provided.
4. However the judge stated in paragraph 16 that the appellant had not provided sufficient evidence to demonstrate that she had access to at least £50,000.
5. The grounds of appeal referred to the letter of refusal which had accepted that the appellant had provided sufficient evidence to demonstrate that she had access to at least £50,000.
6. On that basis permission to appeal was granted.
7. Mr Melvin quite sensibly accepted that the judge had erred in law by not following the fact that the respondent had accepted that the appellant had the £50,000 required and that it appeared that the appellant met the requirements of the rules. He indicated however that he considered it might be appropriate for the appeal to be looked at by the relevant case worker at the Home Office who would consider reversing the decision.
8. I have considered the documentary evidence which included evidence of accounts held with Bank of America and Morgan Stanley Smith Barney LLC as well as a letter

from the appellant's mother's attorney confirming that those funds were available for the appellant, that letter being countersigned by the appellant's mother. I am satisfied that that documentary evidence was before the respondent when the decision was made.

9. I consider that there is a material error of law in the determination of the judge in that the judge did not take into account the statement by the respondent that it was accepted that the appellant had access to £50,000 under provision (d) of Table 4 of Appendix A of the Immigration Rules. I therefore set aside the determination.
10. I further consider that, as I have all relevant evidence before me it is appropriate for me to go on to re-make the decision.
11. Taking into account the acceptance by the respondent that the money was available and the finding, which has not been challenged, of the judge that the appellant was active in her business and further taking into account the evidence of funds and their availability to the appellant, I conclude that the appellant does qualify for leave to remain as a Tier 1 (Entrepreneur) Migrant under the points-based system and I allow the appeal on that basis.

Decision

12. This appeal is allowed.

Fee Award

In the light of my decision allowing the appeal I have considered whether to make an award for the remittal of the fee. Having regard to Presidential Guidance Note 2011 I remit the fee paid by the appellant. I do not consider that the appellant was responsible for the negative original decision.

Signed

Date

Upper Tribunal Judge McGeachy