



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/10535/2013

THE IMMIGRATION ACTS

Heard at Field House
On 5 December 2013

Determination Promulgated
On 20 December 2013

Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

MISS LIJUAN GU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss L Appiah of Counsel
For the Respondent: Mr S Whitwell - Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of China who was born on 26 March 1990. She came to the United Kingdom on 19 September 2012 with leave to enter as a student until 7 January 2013. On 4 January 2013 she made an application for leave to remain in the

United Kingdom as a Tier 4 (General) Student Migrant under the points-based system. This application was refused on the basis that she claimed 10 points for maintenance (funds) under Appendix C of the Immigration Rules. However, the documents she provided were dated more than a month prior to the date of the application and therefore the Secretary of State was not satisfied that these documents met the requirements of Appendix C and thus awarded her no points.

2. The appellant appealed that decision. The First-tier Tribunal Judge dismissed the appeal under the Immigration Rules and Article 8 ECHR. On a renewed application to the Upper Tribunal the appellant was granted leave to appeal that decision. This was on the basis that in the judge's findings at paragraph 21 of the determination with regard to the appellant's inability to meet the requirements of the Immigration Rules he failed to understand, and thus to make findings on, the explanation given by the appellant as to the period covered by a Certificate of Deposit of funds. Furthermore, he arguably misunderstood the reason she gave for being able subsequently to produce an updated certificate.
3. Before me I heard submissions from both representatives. I made a full note of those submissions and have taken them into account in arriving at my decision.
4. I announced my decision at the hearing that the judge's determination contained errors such that the decision could not be safely relied on.
5. In refusing the appellant's application the respondent stated as follows:-

"You made your application as a Tier 4 (General) Student Migrant on 4 January 2013. The Personal Certificate of Deposit submitted in support of your application is dated 09 November 2012. This is dated more than one month prior to your application date and as such, we are unable to take this document into account when assessing your funds. Therefore you have not demonstrated that you have the level of funds required to be granted as a Tier 4 (General) Student Migrant.

Whilst a Personal Certificate of Deposit certifies that from 09 November 2012 to 16 February 2013 you have a deposit account with the Bank of China containing CNY 300,000.00 this cannot be accepted for your maintenance requirement as you are able to access the funds at any time, so the amount in your account cannot be guaranteed after 09 November 2012.

Because of this you were sent an email on 20 February 2013 to request details of the funds in the account from 08 December 2012 to 04 January 2013, however an email was received by you on 01 March 2013 refusing to send the required information and requesting a decision to be made on the information already received.

It has therefore been decided that you have not met the requirements as specified within the Immigration Rules and no points have been awarded for maintenance (funds)."

6. The judge in the determination at paragraph 21 finds that the appellant has failed to discharge the onus upon her in relation to the requirements of the Rules. The reasons, he says, are set out clearly in the refusal letter. The appellant was given an opportunity to rectify the situation and submit a further document which she failed to do. The judge then, in essence, rejects the appellant's explanation that she could not access funds without being physically present in China because she was able to submit a further document in an original form at a later date after refusal. However, this does not show necessarily that the appellant could have had access to the funds merely by being able to produce a further original document at a later date. Paragraph 3 of the notes contained within the Certificate of Deposit shows that the depositor deposited with the bank for a fixed term which could not be withdrawn or transferred within the valid period of the certificate. However, in paragraph 5 of the same notes is written the following as translated:-

"The recipient of this certificate shall be aware that the applicant of the certificate is entitled to request the bank to unfreeze the accounts under the certificate before or on the closing date indicated therein upon the return of the original certificate to the bank."

7. The judge did not comment upon these notes and their possible importance to the appeal.
8. Bearing in mind also that the appellant relied on Article 8 and the judge had before him a further document to show that the same funds were still in the account some months after the date of decision, even if he was unable to take it into account, it did require that there be a proper assessment of the Article 8 ECHR position. The judge dismissed the appeal, however, in one sentence stating that the decision of the respondent is in his view proportionate. This is not a situation where the appellant's claim was so hopeless that it could be dismissed in that way and thus the judge erred.

The Further Hearing

9. Having announced that I found that the judge made an unsafe decision I checked that no further evidence was to be given and no further submissions were to be made and I thereafter reserved my decision having set aside the First-tier Tribunal Judge's one.
10. The concern in the refusal letter was that because the personal Certificate of Deposit submitted in support of the application was dated more than one month prior to the application date between the date of the certificate of deposit and the date of application the appellant was able to access the funds at any time. It is a requirement of the Rules that (in the appellant's case) she was in possession of £10,794 for a consecutive 28 day period. As something of an aside it does not appear to have been argued at any point that as the appellant could not in effect access the funds unless she produced the original certificate and presented herself at the Bank of China (in China) she did not "have the required funds" etc. for the relevant period so I say no more about it.

11. It was accepted before me by Mr Whitwell on behalf of the respondent that the original personal Certificate of Deposit was lodged with the respondent. That shows that it is the equivalent of a term account, contains CNY 300,000 which was deposited on 17 August 2012, and on the front page makes reference to the terms and conditions on the back which are those contained in and referred to earlier as "notes". On the face of it the appellant was unable to withdraw or transfer the money or any part of it between 9 November 2012 and 16 February 2013 as these are the dates shown on the certificate. Although note 5 makes it a term and condition that the recipient of the certificate can request the bank to unfreeze the accounts under the certificate before or on the closing date, this was always on the basis that the original certificate had to be returned to the bank.
12. The appellant was unable to request the bank to unfreeze the account and return any or all of the monies to her because the original certificate was lodged and is still with, I believe, the respondent. As a fact paragraph 1A(c) of Appendix C of the rules states, "If the applicant is applying as a Tier 4 Migrant, the applicant must have had the funds referred to in (a) above for a consecutive 28-day period of time". (a) states, "The applicant must have the funds specified in the relevant part of Appendix C at the date of the application" and at (h) "the end date of the 90-day and 28-day periods referred to in (b) and (c) above will be taken as the date of the closing balance on the most recent of the specified documents (where specified documents from two or more accounts are submitted, this will be the end date for the account that most favours the applicant), and must be no earlier than 31 days before the date of application."
13. The personal certificate of deposit certified that for a period from 9 November 2012 to 16 February 2013 the appellant had deposited with the Bank of China the equivalent of nearly three times the amount needed to show that she complied with the maintenance (funds) requirements of the Immigration Rules. Although the start date for the certification is more than 28 days prior to the date of application, the certificate is in effect a continuing statement covering the period of the date of application. To all intents and purposes the appellant could not have access to the amount that she had deposited because one of the terms and conditions was that the original certificate would have to be returned to the bank. This, however, was in possession of the respondent.

Conclusions

14. My conclusion is that this being the only part of the Immigration Rules that was in issue and the appellant has shown that she has complied with that part of the Immigration Rules, this appeal succeeds.
15. I mention that this was a matter where the respondent wrote to the appellant on 20 February 2013 asking her to provide (in essence) a personal Certificate of Deposit between 8 December 2012 and 4 January 2013 because the document provided was dated 9 November 2012 which is more than 31 days prior to the application. It would have been easy enough, one would have thought, for the appellant to provide

what was required of her. Although there is reference to the appellant refusing to send the required information, I would not put it as strongly as that but to a large extent the appellant has herself to blame for not obtaining prior to the date of refusal a further Certificate of Deposit. She was able to do so post decision, albeit with her parents intervening to obtain it and the manager of the bank becoming involved. I draw comfort from the fact that the post decision evidence (which is not to be taken directly into account) shows that well after the date of decision the same amount that had been deposited initially by the appellant was still in the account. As a fact therefore during the period from well before the date of application and until well after the date of decision shows that the appellant was in possession of adequate maintenance (funds).

16. Because the appellant has met the requirements of the Immigration Rules I do not need to go on to consider the Article 8 ECHR position. I note, however, that the appellant only came into the United Kingdom relatively recently and is unlikely to have made out a strong private life claim.

Decision

17. The First-tier Tribunal Judge erred as set out above and for the reasons given the decision is set aside.
18. I substitute for the First-tier Tribunal Judge's decision that this appeal is allowed under the Immigration Rules.
19. I did not find that there is any need in the particular circumstances for an anonymity direction to be made.

Signed

Dated

Upper Tribunal Judge Pinkerton