



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: IA/02034/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 11 August 2014**

**Promulgated on
On 21st August 2014**

Before

UPPER TRIBUNAL JUDGE LATTER

Between

Secretary of State for the Home Department

Appellant

And

Yadab KC

Respondent

Representation:

For the Appellant: Mr I Ali of Everest Law Solicitors

For the Respondent: Mr G Jack, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal issued on 02 June 2014 allowing the claimant's appeal against the decision of 06 December 2013 refusing him further leave to remain as a Tier 4 (general) student migrant. In this decision I will refer to the parties as they were before the First-tier Tribunal, the claimant as the appellant and the Secretary of State as the respondent.

2. The appellant is a citizen of Nepal born on 15 May 1986. On 13 February 2011 he was granted leave to enter as a Tier 4 student until 24 December 2012 and on 06 November 2012 he made an application for further leave to remain. His application was refused on the basis that the letter produced from NCC Bank confirming that he had been given a loan of 1,500,000 rupees was required to show that the loan was provided by the national government, the state regional government or a government sponsored student loan company or as part of an academic or educational loan scheme. Judge Oakley found that the appellant was able to meet the requirements of the policy guidance in force at the date of decision and the appeal was allowed.
3. The respondent sought permission to appeal on the basis that as of 06 December 2013 Appendix C of the Rules required at para 1B(d)(7) that the letter provided the information referred to above. When considering the application for permission to appeal Judge Brunnen said that this point was misconceived as the application was made on 06 December 2012 and the amendments to Appendix C were introduced with effect from 28 February 2013 by HC760 and at the preamble to that statement it was made clear that the change was not applicable to an application made before but not decided by 28 February 2013. However, permission was granted on the basis that the Judge arguably did not make any finding on whether the admissible evidence satisfied the version of the Rules applicable to the application.
4. At the hearing before me Mr Jack conceded that the appellant's application should have been decided under the provisions of the Rules pre-dating the amendment introducing the requirement set out at para 1B(d)(7) and that Judge Brunnen's comments in this respect were correct. He did not seek to argue that there had been any failure by the judge to make any essential findings of fact on the evidence before him and conceded that the appeal should be allowed. In these circumstances I did not need to hear from Mr Ali. Mr Jack sought to withdraw his case and I am satisfied that this is a proper course to take and give consent under Rule 17 (2). The effect is that the decision of the First-tier Tribunal allowing the appeal stands.

Decision

5. The respondent has withdrawn her case. The decision of the First-tier Tribunal stands.

Signed

Date: 11 August 2014

Upper Tribunal Judge Latter