



IAC-FH-NL-V1

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

Appeal Number: IA/10997/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 2 October 2014**

**Determination
Promulgated
On 24 October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

MS LILIAN KAMBUA MALUKI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representation

For the Respondent: Mr M Shilliday, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Kenya and her date of birth is 3 May 1986. On 11 September 2012 she was granted leave to enter the UK as a Tier 4 Migrant. She made an application on 10 January 2014 for a variation of her leave to remain in the UK in order to attend her graduation ceremony. This application was refused by the Secretary of State in a decision of 4

February 2014. It was refused because the application to vary leave was one that was made outside the Rules and there were no exceptional circumstances.

2. The appellant appealed and her appeal was dismissed by Judge of the First-tier Tribunal K Henderson in a decision that was promulgated on 26 June 2014 following a hearing on 19 June 2014. Permission was granted to the appellant on 7 August 2014 by Judge P J M Hollingworth. The FtT made findings at paragraphs 14, 15 and 16 as follows:

“14. The Appellant entered the United Kingdom with a valid student visa. I note from the documents provided that she was funded to come to United Kingdom for postgraduate studies. She completed a Masters in Public Health which was funded by the Commonwealth Shared Scholarship Scheme which in turn is funded by the Department for International development. Prior to this she was working for the Norwegian Refugee Council in Nairobi. The Appellant successfully completed her studies in September 2013. She did not provide evidence to show the successful completion of studies but I have no reason to doubt that she was being honest and straightforward when she gave evidence.

15. I am not aware of any current Immigration Rules or IDI policies which allow a person to stay in excess of three months in order to attend a graduation ceremony. I am unclear as to why Leeds Metropolitan University have graduation ceremonies so long after the completion of a course particularly where a student is from overseas and it is entirely conceivable that they may not be able to remain in order to attend the graduation ceremonies so long after the completion of a course particularly where a student is from overseas and it is entirely conceivable that they may not be able to remain in order to attend the graduation ceremony. I also appreciate that attending a graduation ceremony is very important for some students. It is a highlight in terms of their academic achievement. I therefore sympathise with the Appellant in wishing to enjoy the rewards of her studies.

16. The Appellant has sought further leave for a purpose not covered under the Immigration Rules. To that extent her appeal must fail. The Respondent indicated that it would be unlikely that the Appellant would be removed if she were able to show that she had made arrangements for her departure and she provided evidence of the date of the graduation ceremony. This would be the best possible solution for all concerned. The Appellant indicated that she would be providing this evidence at the end of the hearing.”

The Grounds of Appeal and Oral Submissions

3. The grounds seeking leave to appeal argue that the Judge made a material error of law in failing to consider the relevant policy (in relation to students who wish to remain in order to attend their graduation ceremony) and failing to determine the appeal under Article 8. The appellant attended the hearing before me and confirmed that she had attended her graduation ceremony on 22 July 2014 but she still wished to proceed with the appeal.
4. Mr Shilliday accepted that the Judge made an error of law in failing to determine Article 8 but that it was not material.

Conclusions

5. The appellant with her application for permission submitted a policy document dated June 2009 entitled "Immigration Directorates Instructions, Chapter 3, Section 3, Leave to Remain for Students (General) and the relevant section is 27.8 which is entitled "Leave to attend Graduation" and reads as follows:

"The additional leave, granted to a student after their course is finished, should be sufficient to allow a student to attend their graduation. However there may be instances when the graduation takes place on a date beyond the additional four months already granted. If this happens the student will need to apply and satisfy the requirements of the visitor provisions of the Rules for any leave to remain beyond the additional four months already granted. If successful, leave to remain is granted on code 3 which prohibits employment."
6. The Judge did not refer to a policy and it is not clear to me whether it was brought to his attention. Mr Shilliday was not able to confirm whether the policy relied on by the appellant is current policy or historical. However, in my view it is not material. The sole basis of the appellant's application was in order for her to attend the graduation ceremony which has now come and gone. The Judge did not consider Article 8 but it is clear that it is not engaged in this case. The appellant's case was that she wanted to stay for her graduation ceremony. No further evidence was submitted to the UT. The decision of the Judge to dismiss the appeal under the Rules is maintained. In addition I dismiss the appeal under Article 8 of the 1950 Convention on Human rights.

Signed Joanna McWilliam

Date 22 October 2014

Deputy Upper Tribunal Judge McWilliam