



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/26259/2013

THE IMMIGRATION ACTS

Heard at Manchester
On 13th June 2014

Determination Promulgated
On 20th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

MISS SIDRA NISAR
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No-one attended

For the Respondent: Miss Johnson, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, Miss Sidra Nisar, date of birth 5th March 1987, is a citizen of Pakistan.

2. I have considered whether any of the parties to the present proceedings requires the protection of an anonymity direction. Taking account of all the circumstances I do not consider it necessary to make an anonymity direction.
3. The Appellant did not attend and there was no attendance by anyone acting on her behalf. By documents faxed to the Tribunal dated 12th June 2014 the Appellant has given instructions to Juris Solicitors that she wants the matter to be determined on the basis of the papers lodged with the Tribunal. I determined to proceed and hear the appeal.
4. This is the Appellant's appeal against a determination of First-tier Tribunal Judge McMahon promulgated on 17th December 2013.
5. By a decision taken on 28th March 2014 First-tier Tribunal Judge P J M Hollingworth determined that there was an arguable error of law and granted permission to appeal. The reasons for the decision are:-
 - 1 An error of law is disclosed. Article 8 was not considered. Plainly education is an important aspect of private life.
6. In the permission granted there is no identification of any issue with regard to the findings made by the judge under the Immigration Rules.
7. The Appellant had entered the United Kingdom in April 2011 as a student. Her leave was extended as a Tier 4 (General) Student Migrant valid until August 2012. The Appellant then made application for further leave to remain as a student.
8. In respect of the Immigration Rules the judge found at paragraph 8 that the bank statement submitted by the Appellant from her father, Mr Nisar Ahmed Baig, disclosed only £400 in savings. As the Appellant was required to have £2,000 at least in order to meet the requirements of the Rules the judge found that the Appellant did not have the required funds to meet the Rules.
9. In the Grounds of Appeal it is suggested that the judge should have taken account of an affidavit from Mr Baig in assessing whether or not the Appellant met the requirements of the Rules. It is claimed that the affidavit is sufficient to show that Mr Baig had the funds to support the Appellant.
10. The Rules require that the Appellant produces bank statements to show that she or her sponsor have the required funds. The Appellant has not produced the bank statements to show that she had the funds and therefore does not meet the requirements of the rules. The Sponsor did not have the funds in the bank account. Thus the Appellant could not meet the requirements of the Rules.
11. It is suggested that the judge has failed to consider Article 8 private life. With respect that seems to ignore the case law. I draw attention to the case of Gulshan [2013] UKUT 640, Nagre [2013] EWHC 720 and Haleemudeen [2014] EWCA Civ 558. The cases make the point that the Rules are Article 8 compliant and that it would only be

where the facts warrant consideration outside the rules under Article 8 that Article 8 needs to be considered on the basis of Razgar [2004] UKHL 27.

12. In respect of the present circumstances the only factor that arises is the issue of education. As pointed out in the case of CDS (Brazil) [2010] UKUT 00305 (IAC) there is no Article 8 right to come to the United Kingdom to be educated. Equally it is questionable whether there is a right to remain in the United Kingdom to continue to receive education where one does not meet the requirements of the Rules.
13. The Rules are there to provide a means by which an individual can remain in the United Kingdom to study and as they are Article 8 compliant provide for any right to continue with education. There would have to be something exceptional within the facts which would justify consideration of the case outside the Rules on Article 8 grounds.
14. The Appellant has not advanced any other element of family or private life that would engage Article 8. The only factor is her desire to continue in education in the United Kingdom. The Rules provide a means by which she could continue with her education but seek to ensure that the Appellant would be self-sufficient in seeking to pursue her education. Taking account of all the circumstances there is nothing that warrants the consideration of the Appellant's case outside the Immigration Rules. Accordingly there was no reason for the judge to consider Article 8 outside the Rules.
15. Even if the judge had considered Article 8 outside the Rules the facts as presented were such that the decision would in any event be proportionately justified.
16. There was no aspect of family life that the Appellant raised. Even if private life were raised and the decision seriously interfered with that private life the decision is clearly in accordance with the law and for the purposes of maintaining the economic wellbeing of the country. The issue would be whether or not the decision in a democratic society is proportionately justified. Taking account of all the facts I am satisfied that the decision is proportionately justified in any event.
17. Accordingly for the reasons set out there is no material error of law within the original determination. I uphold the decision to dismiss this matter on all grounds.

Signed

Date

Deputy Upper Tribunal Judge McClure