



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: IA /30425 / 2013

THE IMMIGRATION ACTS

Heard at: Field House
On 22 May 2014

Determination promulgated
On **09 JULY 2014**

Before

Lord Bannatyne, sitting as a Judge of the Upper Tribunal
Upper Tribunal Judge Gill

Between

The Secretary of State for the Home Department

Appellant

And

Mr. Venura Lakshal Abeysinghe Bowalage

Respondent

For the Secretary of State: Mr. S. Walker, Senior Home Office Presenting Officer.
For the Respondent: Mr. S. Mahmud, of Counsel.

Decision on the Secretary of State's application to withdraw her appeal to the Upper Tribunal

1. On 17 April 2014, the Secretary of State was granted permission to appeal by Judge of the First-tier Tribunal (Immigration and Asylum Chamber) Grant-Hutchison against the decision of Judge of the First-tier Tribunal (Immigration and Asylum Chamber) A W Khan who, following a hearing on 28 February 2014, allowed the appeal of Mr. Bowalage (hereafter the Claimant), a national of Sri Lanka born on 18 September 1981, against the decision of the Secretary of State of 8 July 2013 to refuse his application of 15 January 2013 for leave to remain as a Tier 4 (General) Student Migrant under the Points-Based System.
2. The Secretary of State refused the application because she was not satisfied that the Claimant satisfied the maintenance requirement in Appendix C of the Statement of Changes in the Immigration Rules HC 395 (as amended) (the Immigration Rules). This was because the Secretary of State considered that the financial documents

provided by the Claimant to demonstrate that he had the required funds (being £1,600) for the required consecutive 28-day period were issued by the Swarnamahar Financial Services PLC, an organisation that was not on the list of acceptable financial institutions published at table 13 of Appendix P of the Immigration Rules.

3. At the hearing before Judge Khan, Counsel for the Claimant produced material which showed that HC 1039 introduced table 13 of Appendix P on 14 March 2013 and that the transitional provisions provided that any application made before 6 April 2013 would be decided in accordance with the Immigration Rules in force on 5 April 2013. The Secretary of State's representative concurred.
4. On that basis, Judge Khan held that it was not necessary for the Claimant to demonstrate that the required funds were issued by an acceptable institution, as his application was made before 6 April 2013. He therefore found that the Secretary of State had incorrectly applied table 13 of Appendix P of the amended Immigration Rules to the Claimant's application. He allowed the appeal.
5. Judge Grant-Hutchison granted permission on the ground that Appendix P setting out a list of named financial institutions existed as at 5 April 2013 and Swarnamahar Financial Services PLC was not featured on the list on that date. In doing so, Judge Grant-Hutchison relied upon the Secretary of State's grounds.
6. It was established at the hearing before us that the Secretary of State's grounds were incorrect and that table 13 was only inserted on 6 April 2013 by HC 1039.
7. Mr. Walker therefore informed us that he was withdrawing the Secretary of State's appeal.
8. Rule 17 of the Tribunal Procedure (Upper Tribunal) Rules 2008 provides for a party to withdraw its case before the Upper Tribunal, with the consent of the Tribunal, but there is no provision for a party to withdraw the appeal before the Upper Tribunal.
9. Accordingly, the Secretary of State requires the consent of the Upper Tribunal to withdraw her case. For the reasons given above, the Secretary of State's grounds were incorrect. We therefore give our consent to the withdrawal of her case pursuant to rule 17(2).
10. This means that Mr. Bowalage's case before the Upper Tribunal is unopposed. We are therefore satisfied that Judge A W Khan did not make any error on a point of law. Accordingly, we dismiss the Secretary of State's appeal.

Upper Tribunal Judge Gill

Date: 9 July 2014