



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/30736/2013
IA/30739/2013

THE IMMIGRATION ACTS

Heard at Field House
On 15th August 2014

Determination Promulgated
On 22nd August 2014

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS HEMALATHA DHANJAYARAJ (FIRST RESPONDENT)
SATHISH KUMAR LAKSHMIPATHY (SECOND RESPONDENT)
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Mr P Deller, Senior Home Office Presenting Officer
For the Respondents: Miss A Benfield of Counsel

DETERMINATION AND REASONS

1. In this appeal the Appellant is the Secretary of State for the Home Department and Mrs Hemalatha Dhanjayaraj and Sathish Kumar Lakshmiopathy are the Respondents. However for the purposes of this determination I shall refer to the Secretary of State as “the Respondent” and to Mrs Hemalatha Dhanjayaraj and Sathish Kumar Lakshmiopathy as “the Appellants”, which is how they were addressed before the First-tier Tribunal.

2. The Appellants are citizens of India. The first Appellant was born on 9th December 1987 and the second Appellant on 5th March 1984. The second Appellant is the husband of the first Appellant and his appeal is dependent upon that of his wife, as she is the principal Appellant in these proceedings.
3. On 27th December 2012 the principal Appellant applied for further leave to remain in the UK as a Tier 4 (General) Student Migrant. The Respondent refused the application on 2nd July 2013 on two bases.
 - The CAS assigned by the principal Appellant's Tier 4 Sponsor did not evidence that her course of study represented academic progression. Therefore she was not entitled to be awarded 30 points under Appendix A of the Immigration Rules.
 - The Appellant had not evidenced sufficient maintenance amounting to £2,500 and therefore she was not entitled to be awarded 10 points under Appendix C.
4. The principal Appellant appealed that refusal, and the appeal came before the First-tier Tribunal (Judge Meah) at Taylor House.
5. After hearing submissions from the Appellant's representative (the Respondent being unrepresented at the hearing), the judge decided that the Respondent's decision was not in accordance with the law as the Respondent had failed to apply her own policy, namely her guidance – Tier 4 – v.6.0 in relation to evidential flexibility regarding the principal Appellant's CAS and the lack of relevant information regarding academic progression.
6. The judge noted that this guidance was extant at the date of the principal Appellant's application and noted that the Respondent's policy at that time was to make an enquiry in the event that a CAS had been issued without evidence of academic progression.
7. Having accepted this argument and considered that this amounted to a fatal error in the Respondent's decision, the judge made the following decision.

“Decision

The appeals are allowed to the extent that they are remitted back to the Respondent to consider afresh given my finding that the original decision in the first Appellant's application was not in accordance with the law.”

8. The Respondent sought and was granted permission to appeal that decision. The grounds claimed that the judge had erred in this respect. Although the judge had found that the Respondent's decision was not in accordance with the law, since she had failed to have regard to her own policy in relation to the principal Appellant's CAS, the judge's determination was incomplete as there were two parts to the Respondent's decision. The judge failed to go on to consider the remaining part of the refusal decision; namely whether the principal Appellant could satisfy the

maintenance requirements. Had the judge made findings of fact in relation to both parts of the issue raised in the refusal decision, then the judge would have been in a position to conclude that the Appellant could not satisfy the requirements of the Immigration Rules in any event and should have gone on to dismiss the appeal. Therefore there would be no need to remit the decision to the Secretary of State as not being in accordance with the law.

9. Permission having been granted the matter came before me.

Error of Law

10. I heard from Mr Deller and am grateful to him for his sensible approach to this matter. He accepted that the judge's finding that the Respondent had failed to follow her own policy was impugnable. The question before me therefore amounted to this. Was the judge wrong to not deal with the maintenance issue? In the circumstances of the present appeal, he accepted this would amount to no more than an academic exercise. Whatever the issue with the maintenance question, he could not resile from the fact that the policy in force at the time that this decision was made, had not been properly followed. The judge took the view that what was before him was one decision and that since that decision was not in accordance with the law, there was no need to go further than that and make findings on the maintenance issue. That was a valid view point and the sensible course would be for the whole decision to be looked at again in the light of whether or not the principal Appellant had made academic progression. If that turned out to be the case as expected then it was probable that the maintenance issue could be looked at again as part of that decision and resolved.

11. Miss Benfield unsurprisingly had nothing further to add to this.

12. I find therefore that the decision of the Respondent was not in accordance with the law and that the decision remains outstanding before the Respondent there being no requirement for the judge to make any finding on the maintenance component contained in the decision.

Decision

13. The decision of the First-tier Tribunal, finding that the Secretary of State's decision of 2nd July 2013 refusing the principal Appellant's application was not in accordance with the law, stands. The decision concerning the second Appellant stands with that of the principal Appellant. The Secretary of States appeal before me is dismissed.

No anonymity direction is made

Signature

Judge of the Upper Tribunal

Dated