**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: IA/41413/2013

**THE IMMIGRATION ACTS**

| **Heard at Bradford** | **Determination Promulgated** |
|---|---|
| **On 9 September 2014** | **On 16 September 2014** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE KELLY**

**Between**

**MISS VICTORY PEMBA WOLO**
**(ANONYMITY NOT DIRECTED)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Unrepresented
For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of the Democratic Republic of Congo who was born on the 29th April 1993. She appeals, with permission, against the dismissal of her appeal by the First-tier Tribunal (Judge Hemmingway) from the respondent's decision to refuse her application for further leave to remain as a Tier 4 (General) Student Migrant and to remove her from the United Kingdom.

2. The basis of the respondent's decision was that the appellant was required to show that she had access to funds of £5,600 throughout a specified period of 28 days, whereas her father's bank account had a maximum credit balance of only £3,282.36 during that period. However, the respondent conceded at the hearing before the First-tier Tribunal that the account had in fact a balance of around £22,000 during the relevant period. She nevertheless submitted that the appeal should fail because the bank statement was written in the French language and the appellant had failed to meet the requirement to provide an English translation thereof. Judge Hemmingway accepted that submission. Additionally, he found that the appellant had failed to meet the requirement within the Rules that the bank statement should "clearly show" that "the funds in the account have been at the required level throughout the specified period". This latter finding was made because, whilst the bank statement had credit and debit columns, it did not have a column that showed the running balance. Judge Hemmingway considered that this may have been why the decision-maker misread the statement so as erroneously to conclude that the account had insufficient funds during the specified period.

3. The gist of the appellant's application for permission to appeal to the Upper Tribunal was that the First-tier Tribunal ought to have treated her failure to meet the formal requirements of the Rules was immaterial, in view of the fact that she had submitted documents that were sufficiently clear to show that she had met their substance. Permission to appeal was granted upon a renewed application to the Upper Tribunal in terms that are somewhat obscure –

   > There is arguably sufficient lack of clarity in the figures and reasoning in the refusal letter, as compared to the documentary evidence, to justify further consideration of the matter, although it may be that that lack of clarity serves only to support the judge's findings …

   As I do not entirely understand what that means, I have confined my consideration in this appeal to the question of whether the First-tier Tribunal erred in the manner claimed by the appellant in her grounds to the Upper Tribunal.

4. Whilst I have great sympathy for the appellant, her situation is by no means uncommon. Applicants frequently fall foul of the highly prescriptive formal requirements of the Points Based System, despite being able to show that they meet their substance. However, a decision to refuse such an application is plainly "in accordance with immigration rules". It follows that the judge was right so to hold in this particular case.

5. In the above circumstances, it is always tempting to allow an appeal on the basis that removal in consequence of the decision would be incompatible with the applicant's right to respect for private and family life under Article 8 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms. However,

it is first necessary to recall the cautionary words of Lord Carnwath in Patel & Ors v Secretary of State for the Home Department [2013] UKSC 72 –

> It is important to remember that article 8 is not a general dispensing power. It is to be distinguished from the Secretary of State's discretion to allow leave to remain outside the rules, which may be unrelated to any protected human right. The merits of a decision not to depart from the rules are not reviewable on appeal: section 86(6). One may sympathise with Sedley LJ's call in *Pankina* for "common sense" in the application of the rules to graduates who have been studying in the UK for some years (see para 47 above). However, such considerations do not by themselves provide grounds of appeal under article 8, which is concerned with private or family life, not education as such. The opportunity for a promising student to complete his course in this country, however desirable in general terms, is not in itself a right protected under article 8.

6. In this case, Judge Hemmingway noted that the appellant could not have had any legitimate expectation that she would be permitted to remain in the United Kingdom otherwise than in accordance with the requirements of the Immigration Rules. He thus concluded that there were no compelling circumstances that merited consideration of the appellant's case outside those Rules. That was a view that was reasonably open to him on the evidence, and there was thus no error of law in his consideration of the appellant's rights under Article 8 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms.

*Decision*

7. The appeal is dismissed.

Anonymity not directed.

Signed Date

Deputy Judge of the Upper Tribunal