



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

Appeal Number: IA/20159/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 29 May 2015**

**Decision &  
Promulgated  
On 3 June 2015**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVID TAYLOR**

**Between**

**MISS KITTIYA KHUNNAM  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Melvin of Counsel

For the Respondent: Mr P Duffy, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a 36 year old citizen of Thailand who has appealed, with permission, against the decision of First-tier Tribunal Judge Miles (promulgated on 9 February 2015) who dismissed her appeal against the

respondent's decision of 28 April 2014 refusing her application under Article 8 ECHR on the basis of her private life.

2. The appellant in this case has, unusually, made three applications to the Secretary of State, the third of which (made on 24 April 2014) was for permission to remain on the basis of continuous lawful residence in the UK. It is common ground, and indeed it was so held by the First-tier Tribunal Judge, that that application remains outstanding and no decision has yet been communicated on it by the Secretary of State.
3. The first application by the appellant was made on 19 February 2014. It was accompanied by a cheque for the appropriate fee but the cheque was not honoured by the appellant's bank because the signature was not recognised. It seems that there were funds in the account but – as became apparent some time after the decision of the First-tier Tribunal – the bank had not updated its signature records. It appears that that information was not in evidence before Judge Miles. The appellant accordingly made another application, in similar terms and with the correct fee, on 10 March 2014 immediately after she knew that the cheque had not been cleared. Unfortunately for her, her leave had expired on 28 February 2014 and the refusal decision made it clear that in those circumstances there was no right of appeal.
4. At the First-tier Tribunal hearing the issues before the judge included the issue of whether the first two applications were valid and whether or not they attracted a right of appeal. For the reasons set out particularly at [15]-[18], The judge gave clear reasons for dismissing the appeal and he found [18] that the first application:

“was properly rejected as invalid and therefore both the application dated 10 March 2014 and that dated 24 April 2014 were separate stand alone applications and not variations of the first application. It also follows that those applications were also both made when the appellant did not have existing leave and therefore there was no right of appeal against the refusal of 10 March application.”
5. Permission to appeal was granted, without any clear reasoning, by First-tier Tribunal Judge Shimmin on 7 April 2015. Thus the matter came before me.
6. Mr Melvin in his brief submissions relied on the grounds that had been put forward by those previously instructed by the appellant. The first and main ground argued essentially that by making the original application on 19 February 2014 the provisions of Section 3C of the Immigration Act 1971 had the effect of continuing the appellant's leave to remain so that she was not out of time when she submitted her later application of 10 March 2014. Mr Melvin went on to submit that the failure to pay the first cheque was entirely that of the bank. Evidence from the bank was produced to me apologising for their error but it is clear from the Tribunal file that such

evidence had only come into being for the purposes of the Upper Tribunal hearing and was not in evidence before the First-tier Tribunal.

7. In reply Mr Duffy, referring to the grounds, submitted that the second and third grounds were irrelevant if, as he submitted, the first ground was of no merit and that the invalidity of the appellant's first application made on 19 February 2014 had no effect and could not extend under Section 3C her leave which expired on 28 February 2014. The valid application made on 10 March 2014 was therefore made at a time when the appellant had no outstanding leave. The judge, he submitted, was entirely correct in dismissing the appeal on those grounds. Although the judge had not referred specifically to the relevant Immigration Rules it was clear that he had applied, correctly, paragraph 34C of the Rules. My attention was also drawn to the relevant "Payment Guidance" printed on the application form which clearly warns an applicant against the consequences of funds not being cleared.
8. Having reviewed all the evidence and the submissions I am satisfied that there was no error of law in the decision of the First-tier Tribunal. It is perfectly clear from paragraph 34C of the Immigration Rules that the appellant's first claim was invalid. As such it cannot be sensibly argued that the lodging of an invalid claim could extend her leave under Section 3C. In the circumstances her first application was a nullity and her later claims were made after her leave had expired. The fact that this was the fault of her bank regrettably does not assist her.

### **Notice of Decision**

**The decision of the First-tier Tribunal did not contain any error of law and it therefore stands.**

**No anonymity direction is made.**

Designated Judge David Taylor  
Deputy Upper Tribunal Judge  
1 June 2015