



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/22805/2014
IA/22838/2014
IA/22839/2014
IA/22837/2014
IA/22836/2014

THE IMMIGRATION ACTS

Heard at Sheldon Court, Birmingham
On 27th February 2015

Decision & Reasons Promulgated
On 9th March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

SYEDA FAIZA GILLANI (FIRST APPELLANT)
SYED AZHAR ALHASSAN GILLANI (SECOND APPELLANT)
SYED HASNAT ALI GILLANI (THIRD APPELLANT)
SYED MOIZ ALI GILLANI (FOURTH APPELLANT)
SYEDA RIZWA GILLANI (FIFTH APPELLANT)
(ANONYMITY ORDER NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: No legal representation
For the Respondent: Mr N Smart, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellants appeal against a decision of Judge of the First-tier Tribunal Manchester promulgated on 3rd September 2014.

2. The Appellants are citizens of Pakistan and the first and second Appellants are married. They are the parents of the third, fourth and fifth Appellants.
3. On 26th December 2013 the first Appellant applied for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant under the Points-Based System (PBS). The remaining Appellants made applications for leave to remain as dependants of the first Appellant.
4. The applications were refused on 6th May 2014. The first Appellant's application was refused with reference to paragraph 245ZX(c) because she had not been awarded 30 points in relation to her Confirmation of Acceptance for Studies (CAS). This was because the CAS which was submitted by the first Appellant was apparently submitted after her application, and indicated that her course was due to start on 5th May 2014. For a CAS to be valid, the course for which it was issued must start within three months of the date of application, and as the course was not due to start until 5th May 2014, the first Appellant failed to meet the requirements of paragraph 116(b) of Appendix A and was not in possession of a valid CAS.
5. In addition the first Appellant had not provided evidence to show that she had passed one of the approved English Language tests to the standard of a minimum of CEFR level B2 and therefore did not satisfy the requirements of paragraph 118(b) of Appendix A.
6. The application was also refused with reference to paragraph 245ZX(d) as the first Appellant had not been awarded 10 points for Maintenance (funds). This was because the first Appellant did not have an established presence in the United Kingdom as a student and therefore she needed to prove that she was in possession of £23,400 in relation to herself and her dependants, for a consecutive 28 day period to meet the Maintenance requirements. The bank statement submitted with the application with account number 635 was not accepted as satisfactory evidence, as it only showed evidence of £23,278.50 between 13th December 2013 and 26th December 2013, and therefore did not cover the required consecutive 28 day period, nor did it prove that the first Appellant held the required level of funds.
7. The applications of the remaining Appellants were refused in line with that of the first Appellant.
8. The appeals were decided on the papers at the request of the Appellants. Judge Manchester (the judge) found that the first Appellant could not satisfy the Maintenance requirements of paragraph 245ZX(d) and therefore the appeal could not succeed under the Rules. The judge did not go on to consider the issues in relation to the first Appellant's CAS. The judge found that the appeals of the remaining Appellants could not succeed under the Rules in line with his finding in relation to the first Appellant.

9. The judge went on to consider Article 8, and found that the Respondent's decisions did not breach Article 8, and the appeals were dismissed on human rights grounds.
10. The Appellants applied for permission to appeal to the Upper Tribunal. In summary it was contended that the judge had erred by not making findings in relation to the first Appellant's CAS, having decided the Maintenance issue. The judge had also erred by not considering that the Respondent had failed to comply with the common law duty to act fairly. Revocation of the Sponsor's licence for the college where the first Appellant had last been studying, meant that she had to meet different requirements, such as an enhanced level of Maintenance, and the first Appellant had to apply for another English language test. In any event the additional requirements were met before the date of the Respondent's decision.
11. The first Appellant had been unable to obtain a CAS until she had undertaken an English language test. She had arranged to take a test with TOEIC, but that organisation was removed from the Respondent's approved list, and she was initially unable to undertake an IELTS test because her passport was with the Respondent.
12. The first Appellant had moved address and had notified her college of this, but did not receive the Respondent's letter dated 3rd October 2013 curtailing her leave until 18th December 2013.
13. It was contended that the Respondent had not properly applied the evidential flexibility policy by failing to notify the first Appellant in relation to missing documents.
14. It was also contended that in relation to Maintenance, in December 2013 the rates of Pakistani currency were fluctuating and the exchange rate at the time was not the correct exchange rate.
15. Permission to appeal was granted by Judge of the First-tier Tribunal Gibb on 24th September 2014.
16. Following the grant of permission the Respondent lodged a response pursuant to Rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 contending that the First-tier Tribunal decision disclosed no error of law. It was submitted that the first Appellant's previous leave had been varied to expire in 60 days' time in accordance with the Respondent's policy, following revocation of the college licence. It was submitted that there was no procedural unfairness in this case, and the first Appellant had been unable to meet the Rules. It was submitted that in any event the first Appellant's CAS would not be able to satisfy the relevant Rules and appendixes, and therefore the application was always doomed to fail.
17. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the First-tier Tribunal determination should be set aside.

The Upper Tribunal Hearing

18. The first Appellant attended. She confirmed she was content to proceed without legal representation. She also confirmed that there was no need for an interpreter and proceedings could be conducted in English. I explained the procedure that would be adopted, and that I had to decide whether the First-tier Tribunal had made an error of law. The first Appellant confirmed that she had seen the Respondent's Rule 24 response and she understood the issues that had to be considered.
19. Before commencing submissions, the first Appellant agreed that I should ask some questions in an effort to clarify issues.
20. The first Appellant confirmed that her application for leave to remain was to enable her to study at Birmingham Informatics College. She accepted that she did not submit a CAS with her application for leave to remain, because this could not be obtained as she did not have a valid English language certificate, as her last certificate expired on 15th December 2013.
21. The first Appellant accepted that the bank statement she relied upon in her application had the account number 635, and covered a period between 13th December 2013 and 11th January 2014.
22. The first Appellant produced a copy of the Respondent's letter dated 3rd October 2013 curtailing her leave so that it expired on 2nd December 2013 rather than 2nd January 2014. This letter confirmed that on 13th May 2013 the Sponsor licence for Birmingham Professional College was revoked. The first Appellant said that she had moved address and informed her college, and did not receive this letter until 18th December 2013.
23. In providing some background information the first Appellant stated that when she arrived in the United Kingdom she studied at Birmingham College of Information & Technology, but she was dissatisfied with the standard of teaching and left that college in April 2012. She then enrolled at Birmingham Professional College in September 2012 and commenced her studies in January 2013. She had a problem in that her visa extension was refused, and she successfully appealed against this and I received a copy of a determination promulgated on 21st January 2013 confirming that the first Appellant's appeal had been successful.
24. The first Appellant stated that she did not discover that the Sponsor licence for Birmingham Professional College had been revoked until 15th November 2013. She then started looking for a new college. She found a new college, but did not have enough time to obtain a new English language certificate and therefore could not submit a CAS with her application for leave to remain on 26th December 2013.

25. In submitting that the Respondent had erred in law, the first Appellant relied upon the written submissions contained within the application for permission to appeal, which have been summarised earlier in this decision.
26. I then heard submissions from Mr Smart who relied upon the Rule 24 response. I was asked to note that revocation of the Sponsor licence for Birmingham Professional College took place on 13th May 2013. The First-tier Tribunal had addressed the issue of fairness and taken into account that the application made by the Appellant for further leave to remain, would have had to have been made in any event by the Appellant, even if her leave had not been curtailed, before 2nd January 2014. I was asked to find that the judge had not erred in considering the Immigration Rules, and had not erred in considering the question of fairness, nor evidential flexibility, and Mr Smart contended that the decision of the First-tier Tribunal should stand.
27. At the conclusion of submissions I reserved my decision.

My Conclusions and Reasons

28. I do not find that the judge materially erred in law for the following reasons.
29. The Judge dismissed the appeals because the First Appellant had not proved that she satisfied the provisions of paragraph 245ZX(d). I do not find an error in that conclusion.
30. The first Appellant did not have an established presence as a student. The judge considered this in paragraph 35 of his decision, and took into account the provisions of paragraph 14 of Appendix C. In my view the judge was correct to make this finding, as the first Appellant had not proved that she had finished a single course that was at least six months' long within her last period of leave to remain, and she was not applying for continued study on a single course where she had completed at least six months of that course, neither was she applying for leave to remain as a Tier 4 (General) Student on the doctorate extension scheme. Therefore the judge was correct to find that the first Appellant needed to show that she had total funds of £23,400 in relation to herself and her four dependants.
31. The judge found that the Appellant needed to show that this amount was available at the date of application and for a consecutive 28 day period of time. My view is that paragraph 1A(c) of Appendix C states that an applicant must have the funds for a consecutive 28 day period of time, and (h) states that the end date of the 28 day period is the date of the closing balance on the most recent of the specified documents submitted, and this must be no earlier than 31 days before the date of application. In this case it would appear that the bank statement with account number 635 submitted by the Appellant, could not have been submitted with the application for leave to remain which was submitted on 26th December 2013, because it covers a period between 13th December 2013 and 11th January 2014 and would therefore appear to be inadmissible under the provisions of Section 85A(4) of the

Nationality, Immigration and Asylum Act 2002 (the 2002 Act). However, even if the bank statement was admissible, the judge was correct to find that it did not satisfy the requirements of the Immigration Rules, because the amount contained therein was less than £23,400, and the bank statement did not cover the 28 day period referred to in paragraph 1A(h) of Appendix C.

32. Therefore the judge was correct to find that the burden of proof had not been discharged in relation to paragraph 245ZX(d). The appeal of the first Appellant therefore had to be dismissed under the Immigration Rules, as did the appeals of the remaining Appellants.
33. In my view the judge should have gone on to make findings in relation to the other reasons for refusal, as these were referred to in the Grounds of Appeal, and Section 86(2) of the 2002 Act, requires the Tribunal to determine any matter raised as a Ground of Appeal. It was not however a material error not to have made findings in relation to the other reasons for refusal. This was because the appeal could not in any event succeed because of the failure to satisfy paragraph 245ZX(d).
34. If the judge had considered the other reasons for refusal, in my view the appeals would have been dismissed on those grounds also. The first Appellant accepts that she did not submit with her application a valid CAS, nor did she submit a valid English language test certificate from an approved provider. Therefore the requirements of paragraph 245ZX(c) could not be satisfied in relation to the first Appellant.
35. The judge considered the issue of fairness and took into account all that the first Appellant submitted on this issue, in her letters dated 28th April 2014 and 10th July 2014, and these letters are referred to in paragraphs 32 and 34 of the First-tier Tribunal decision. The judge in paragraph 42 considered the revocation of the Sponsor licence of Birmingham Professional College and noted that even if that licence had not been revoked, the first Appellant's leave was due to expire on 2nd January 2014, and therefore she would have needed to make a further application for leave to remain in any event. The first Appellant contended that she would not have needed to have provided an enhanced level of Maintenance nor would she have needed to provide a further English language certificate. However I find this speculative on the first Appellant's part, in that the Sponsor licence was revoked as long ago as 13th May 2013, and the judge was entitled to consider the first Appellant would not have an established presence as a student and therefore she would have needed to show she had available the sum of £24,300, and she would have needed to supply a new English language test certificate if she made her application for leave to remain after 15th December 2013 when her previous certificate expired.
36. The judge did not err in considering eventual flexibility, finding in paragraph 43 of his decision there was no evidence that the bank statement was one of a series which was missing, and it could not be said that the Respondent should have anticipated that addressing any omission would lead to a grant of leave, and it is clear the first

Appellant's application was submitted without a valid CAS, without a valid English language test certificate, and with a bank statement that did not show that the required funds were held in the account, for the required period.

37. For the reasons give above I do not find that the First-tier Tribunal decision discloses a material error of law.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision. The appeals are dismissed.

No order for anonymity was made by the First-tier Tribunal. There has been no request for anonymity and the Upper Tribunal makes no anonymity direction.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

3rd March 2015

TO THE RESPONDENT FEE AWARD

The appeals are dismissed. There is no fee award.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

3rd March 2015