



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

Appeal Number: IA/44273/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 11 September 2015**

**Decision & Reasons
Promulgated
On 25 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS ZIYU ZHANG

(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr G Harrison, Home Office Presenting Officer
For the Respondent: No Appearance

DECISION AND REASONS

1. This is the appeal by the respondent against a decision of the First-tier Tribunal and, in particular, the decision of First-tier Tribunal Judge Clemens ("the Immigration Judge") to allow the appeal under the Immigration Rules.
2. The appellant is a Chinese national who was refused further leave to remain in the UK on 18 October 2014. The application was made under the points-based scheme and the issue was whether the appellant had adequate funds to satisfy that scheme.
3. The present appeal to the Upper Tribunal is by the respondent. The grounds of appeal dated 3 March 2015 state that the decision to allow the appeal under the Immigration Rules was wrong in law. The respondent advances one short point. The appellant, having applied for leave to

remain as a Tier 4 (General) Student Migrant under the points-based system, subsequently departed from the UK voluntarily, it would appear, on 12 December 2014. That being so, the appeal is treated as being abandoned for the purposes of the relevant legislation.

4. Unfortunately neither the representative of the respondent who drafted the grounds nor Mr Harrison referred to the relevant statutory provisions. Mr Harrison explained that he had limited time to prepare the file.
5. Having carried out my own research on the point, it seems that Section 104(4) of the Nationality, Immigration and Asylum Act 2002 is the relevant provision. It states that an appeal under section 82 (1) brought by a person shall be treated as being abandoned if the appellant leaves the UK. That provision has now been repealed by the Immigration Act 2014 but I have carefully considered the statutory provision which repealed section 104 and note that the repeal only applies to cases where the application is made on or after 20 October 2014 (see Articles 1, 9-11 of the Immigration Act 2014 (Commencement) Order 2014 S.I. 2771 of 2014 referred to in the notes to section 104 (4) of volume 2 of Mac Donald's Immigration Law 9th Ed, volume 2 at p.258). This is not such a case because the decision pre-dated 20th October and therefore the application cannot have been after that date. Given that the appellant had left the UK on 12 December 2014 it follows that the effect of section 104(4) of the 2002 Act is that her appeal ought to have been treated as having been automatically abandoned.

Notice of Decision

The respondent's appeal against the decision of the First-tier Tribunal is allowed. I find that there was a material error of law in the decision of the First-tier Tribunal which is to not treat this case as having been abandoned.

As a postscript it is not surprising that the error occurred because the point was not taken before the First-tier Tribunal, which dealt with this appeal on the papers.

No anonymity direction was made and I make no anonymity direction.

Signed

Date

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Hanbury

