



The Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: IA/49284/2014

THE IMMIGRATION ACTS

Heard at Birmingham
On January 12, 2016

Determination & Reason Promulgated
On January 14, 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MRS MANJINDER KAUR MANAK
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant

Mr Samra (Legal Representative)

Respondent

Ms Johnstone (Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant, citizen of India was granted leave to enter the United Kingdom as a Tier 4 (general) student until May 13, 2011. Her leave was subsequently extended until July 16, 2014 and she then lodged on May 30, 2014 an application to extend her stay further in the same capacity. The respondent refused this on November 26, 2014 and the appellant appealed this decision on December 5, 2014 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. Article 8 ECHR was neither raised in the grounds of appeal nor at the appeal hearing.

2. The appeal came before Judge of the First-tier Tribunal Hawden-Beal on March 12, 2015 and she dismissed the appeal under the Immigration Rules in a decision promulgated on March 19, 2015.
3. The appellant sought permission to appeal that decision on April 2, 2015. Permission to appeal was granted by Judge of the First-tier Tribunal McDade on March 20, 2015 on the basis that as the respondent had accepted the maintenance requirements were met the appeal should have been allowed.
4. The matter came before me on the above date and on that date I heard submissions from both Mr Samra and Ms Johnstone.
5. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I make no order now.

ERROR IN LAW

6. Mr Samra relied on the grounds of appeal lodged in support of this application save he did not pursue any argument in respect of article 8 ECHR. He argued that the judge had failed to have regard to the appellant's previous immigration history and the fact she had consistently met the maintenance requirements since her arrival in 2010. The refusal letter accepted she had the correct funds in her account (£1600) and the correct CAS documentation. The Judge failed to address whether concerns raised in the refusal letter or make a clear finding that she would work and thereby breach the conditions attached to her visa. There was also an element of unfairness in that the Judge should have adjourned the case to enable her witness to attend bearing in mind that weight was attached to this witness's absence.
7. Ms Johnstone relied on the Rule 24 response dated June 4, 2015. She submitted that the refusal letter made it clear on page 2 that the respondent was not satisfied she was a genuine student and the burden of proving she was lay on her. There was no adequate evidence of financial support hence the conclusion that she had not demonstrated she was a genuine student as the immigration officer had suggested she was being paid to care for the children of the family she lived with. The fact her visa had previously been extended was not relevant and in any event prior to 2014 she was maintained by her husband from whom she was now separated/divorced. There was no unfairness in the proceedings as the appellant knew what the issues were and no application had been made for an adjournment, in any event.
8. I reserved my decision.

DISCUSSION AND FINDINGS

9. The appellant came to the United Kingdom as a Tier 4 student. She had originally been represented by solicitors and they served a bundle of documents on the Tribunal on February 17, 2015 and at the same time indicated that the appellant would be attending in person to give oral evidence.

10. At the original hearing the appellant gave oral evidence but there was no request for an adjournment to enable another witness to attend the hearing. She relied on the evidence submitted to support her claim that she was a genuine student and that she was financially supported by her father-this evidence was in the form of her own witness statement/oral evidence along with her father's affidavit.
11. Mr Samra's argument is that as the respondent accepted she satisfied the maintenance requirements then the appeal should have been allowed. However, this submission overlooks the fact that the refusal was under paragraph 245ZX(o) HC 395 which states that to qualify for leave to remain as a Tier 4 (General) Student an applicant must meet the requirements listed including the requirement that "the applicant is a genuine student." If she does not meet the requirements of paragraph 245ZX HC 395 in their entirety then the application must be refused.
12. Page 2 of the refusal letter set out the areas of concern. The mere fact she had the relevant amount of funds in her account did not mean she was a genuine student. The respondent was not satisfied where these funds came from and said as much in the refusal letter.
13. The appeal hearing was an opportunity for the appellant to address any concerns that the respondent still had and in particular to address the fact the respondent wanted further evidence to demonstrate it was her parents who were supporting her because this was her claim. Third party support was not something she could rely on. The appellant therefore relied on her own oral evidence and an affidavit provided by her father in which he stated he had a savings account and he would bear responsibility for all living and tuition fees with his savings and bank deposits being at her disposal. However, when the Judge considered the evidence before him she noted limited evidence of support and identified one payment in January 2014. Her explanation for the other funds was that a friend brought the monies to her but this witness did not attend the hearing.
14. Mr Samra has argued the Judge should have adjourned the hearing but this was an appellant who had been represented until shortly before the hearing and her solicitors had submitted a bundle on her behalf. There was no statement from this witness or even a statement from her father confirming any arrangement. No application for an adjournment was made and I do not find any unfairness in the manner the hearing was conducted. The absence of a witness statement from either her father or the witness demonstrated no intention to call the witness. The burden of proof was on the appellant and she had to decide who to call. Clearly, it was not considered necessary to take a statement from the witness or to obtain further evidence from her father about any arrangement. I am satisfied no unfairness arose during the earlier hearing.
15. The issue for the Judge was whether she believed the appellant was a genuine student. She had the benefit of hearing the appellant give oral evidence and she properly considered all of the evidence presented.

16. There was a dearth of evidence to support her claim that her father supported her financially. The refusal letter raised concerns but I do not find the judge had to deal with every concern raised. The Judge rejected the core part of her evidence that she was supported by her father and gave ample reasons for this. As the Judge properly stated in paragraph [23] “without evidence as to the source of the funds in her account I have to find that the appellant has not discharged the burden of proof...”
17. In the circumstances, I find there is no error in law.

DECISION

18. There was no material error and I uphold the original decision.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

FEE AWARD

I make no fee award as I have dismissed the appeal.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis