



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/21519/2013

THE IMMIGRATION ACTS

Heard at the Upper Tribunal, Bradford
On 22 April 2014

Determination Promulgated
On 30 April 2014

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

SHOLA GRACE OLUWAMAKINDE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Okunniga, RBM Solicitors
For the Respondent: Mrs R Pettersen, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Shola Grace Oluwamakinde, was born on 13 January 1985 and is a citizen of Nigeria. By a decision dated 19 June 2013, the appellant was refused leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant. The appellant appealed against that decision to the First-tier Tribunal (Judge Deavin)

which, in a determination which was promulgated on 19 November 2013, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant's application had been refused on the basis of her failure to prove that she had sufficient funds. Upper Tribunal Judge Grubb, granting permission to appeal, summarised the grounds as follows:

The grounds argue that, in requiring [the appellant] to show a balance of £5,780 both respondent and the judge wrongly based the calculation on the total fee for her two year course rather than as the Rules require, only the first year's fee (plus maintenance). She relies on further documentation including a letter from her college explaining the total fee for the two year ACCA course (£7,560) was payable before commencing the course and she had paid 50% (£3,780) upfront. If that is correct, then arguably the first year's fees had already been paid and the appellant was only required to show she had the maintenance funds for two months. That would be £2,000 for Inner London (which she had in her bank) but the college letter also identifies that the course may not have been based in London in any event but that would only reduce the funds the appellant was required to have.

While the appellant has maintained throughout the appeal (albeit it was decided on the papers) that the required course fee was £7,560, it is at least arguable this was a misunderstanding that the respondent (and the First-tier Tribunal) proceeded on the basis of a mistaken fact that could, arguably, amount to an error of law (see *E&R* [2003] EWCA Civ 1032).

3. There is a Confirmation of Acceptance for Studies (CAS) from Kaplan dated 22 January 2013 which indicates that the first year of fees of the college would be £7,560. It was this CAS that the appellant submitted to the respondent in support of her application.
4. The appellant seeks to rely upon two further letters from Kaplan, one dated 19 December 2013 which records that,

Please note the CAS ... covers the student for the period of four terms (i.e. 22 months). Due to nature of the course package, students are required to pay the full costs before the course commencement date so that 'first year fees' in this case in the entire cost of the ACCA programme the student is being sponsored for. The total cost was £7,560 as per CAS whereas the student paid 50% deposit upfront (£3,780).

The letter goes on to record that there has "been a 50% discount agreed on top of any existing ones. In effect, the student's total for the ACCA programme (the same period of time) changed to £2,850."

5. There is a second letter (wrongly dated 17 January 2013; the parties agree that the date should be 17 January 2014) which offers a further explanation. This letter notes that,

[the appellant] was informed by Kaplan Leeds that she needed to pay the first year's fee (£3,780) upfront and could pay the remaining balance in instalments over the four

terms. Due to an internal error, the first year's fees were incorrectly stated on the CAS as £7,560 instead of the correct amount of £3,780.

6. The appellant seeks to rely upon the Court of Appeal authority of *E&R* (see above). At [66], the Court of Appeal detailed circumstances in which an error of fact may give rise to unfairness amounting to an error of law:

In our view, the time has now come to accept that a mistake of fact giving rise to unfairness is a separate head of challenge in an appeal on a point of law, at least in those statutory contexts where the parties share an interest in co-operating to achieve the correct result. Asylum law is undoubtedly such an area. Without seeking to lay down a precise code, the ordinary requirements for a finding of unfairness are apparent from the above analysis of *CICB*. First, there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter. Secondly, the fact or evidence must have been "established", in the sense that it was uncontested and objectively verifiable. Thirdly, the appellant (or his advisers) must not have been responsible for the mistake. Fourthly, the mistake must have played a material (not necessarily decisive) part in the Tribunal's reasoning.

7. I find that the appellant failed to show that an error of law has occurred in this instance. I find the appellant fails in respect of the third requirement referred to by the Court of Appeal in *E&R* ("the appellant or her advisers must not have been responsible for the mistake.") I accept the appellant and her advisers were not responsible for the error actually occurring on the face of the CAS; Kaplan Financial accept that they are responsible for that error. I do, however, find that the appellant and her advisers are responsible for the mistake having led to the dismissal of the appeal in the First-tier Tribunal. The letters from Kaplan indicate that the appellant was fully aware of their financial arrangements with her and, in particular, what she had to pay to Kaplan in respect of course fees. I find that the error on the face of the CAS would have been apparent to the appellant from the moment the document came into her hands. Not only did the appellant fail to raise any query with Kaplan having received the CAS, she sent it to the respondent in support of her application when she ought to have known that it contained false information. She then compounded that error making no reference whatever to the inaccurate CAS in her appeal to the First-tier Tribunal. Judge Deavin, dealing with the matter on the papers, had before him grounds of appeal drafted by the appellant's representatives which complained only of an alleged failure by the respondent to apply an "evidential flexibility policy" and sought to explain the shortfall in the appellant's funds by reference to money "available in my sponsor's bank account statement which I failed to submit at that material time" (presumably the time at which she submitted the application). I do not accept that the appellant only became aware of the error in the CAS after her appeal had been dismissed in the First-tier Tribunal. The appellant was, therefore, the author of her own misfortune before the First-tier Tribunal. I find that she has failed to show that the First-tier Tribunal erred in law by

dismissing her appeal. In the circumstances, I find that the appeal should be dismissed.

DECISION

8. This appeal is dismissed.

Signed

Date 28 April 2014

Upper Tribunal Judge Clive Lane