



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: IA/48940/2013

IA/48950/2013

IA/48957/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 15 October 2014**

**Determination Promulgated
On 22 October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

**SHALINI PRIRANWADA KUMARI ABAYAKOON HERATH MUDIYANSELAGE
KIRITHI BANDARA ABAYAKOON ABAYAKOON MUDIYANSELAGE
DULEN NETHMIKA BANDARA ABAYAKOON MUDIYANSELAGE**

(ANONYMITY DIRECTION NOT MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Hossein of Bright Star Solicitors

For the Respondent: Mr Nath Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not deem it necessary to make an anonymity direction.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Norton-Taylor promulgated on 24 July 2014 which allowed the appeal to the extent that the decision was not in accordance with the law and was remained outstanding for a lawful decision to be made by the Respondent.

Background

3. The Appellants are all Sri Lankan nationals. On 24 February 2011 the first Appellant arrived in the United Kingdom as a student with the second Appellant her husband and the third Appellant her son as her dependents. On 27 June 2013 the Appellants made applications for further leave to remain. The Appellant applied as a Tier 2 Migrant with her sponsors/employers a Mr and Mrs Coppen. Her employment was to be as a Personnel manager.
4. On 6 November 2013 the Secretary of State refused the Appellant's application. The refusal letter was based on two issues: the absence of a valid Certificate of Sponsorship which resulted in no points being awarded under Appendix A or C and the absence of the required English Language Evidence.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal and First-tier Tribunal Judge Norton-Taylor (hereinafter called "the Judge") allowed the appeal against the Respondent's decision. The Judge found on the basis of the evidence in the Respondent's bundle of what had been submitted with the application that the Appellant had been awarded a Degree by Cardiff University and the language of instruction and assessment was English; in relation to the Certificate of Sponsorship he found that at some point between the date of application and the

Respondent's decision on 6 November 2013 the sponsor withdrew the sponsorship without the Appellant being told and without the Respondent knowing until they accessed their database; he found that the Respondent was under a duty to act fairly in relation to the Appellant's decision and given that she could not have known of the sponsorship being withdrawn they should, in fairness, have allowed her the opportunity to find a new sponsor and the failure to do so was materially unfair.

6. Grounds of appeal were lodged and on 28 August 2014 First-tier Tribunal Judge Simpson gave permission to appeal.
7. At the hearing I heard submissions from Mr Nath who relied on the grounds of appeal.
8. On behalf of the Respondent Mr Hossein submitted that the findings were open to the Judge and this was merely a disagreement with his findings

Finding on Material Error

9. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
10. Dealing firstly with the submission that the Judge had materially erred in finding that the Appellant had provided the evidence to satisfy the language requirements. The refusal letter suggested that the Appellant had submitted an 'academic reference and a transcript' which did not include the date the certificate was issued. This was not the only document however that the Appellant submitted with her application that the Judge had before him. The Judge made a finding in paragraph 18 that the Appellant met the language requirement in Appendix B at the time she applied based on a document that was clearly part of the Respondent's bundle of documents submitted with the application indeed it was the next document in the bundle after the academic transcript referred to. The document was marked E1 and headed Cardiff Metropolitan University 'Official Confirmation of Award'; the date of the award was stated to be 20 March 2013 and the language of assessment and instruction was confirmed to be English. The positive finding was manifestly correct and open to him.

11. The Respondent challenged in the grounds of appeal that the Judge fell into error in finding that the principle of procedural fairness applied to Tier 2 cases. This was an argument that Mr Nath properly did not seek to pursue with any enthusiasm. I am satisfied that the common law duty of the decision making authority to make decisions in a manner which is fair is not, as the Respondent suggests, confined only to Tier 4 student cases but applies as the Judge decided to all such decision making .

12. The Judge then made a careful, well reasoned and detailed analysis of the Appellant's circumstances between paragraphs 25 to 34 explaining why the procedure that was applied in the Appellant's case was procedurally unfair. I am satisfied that this was a conclusion that was open to him for the reasons he gave.

13. I am therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

14. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

15. **The appeal is dismissed.**

Signed

Date 21.10.2014

Deputy Upper Tribunal Judge Birrell