



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

Appeal Number: IA/50377/2013

THE IMMIGRATION ACTS

Heard at Field House

On 13th June 2014

Determination

Promulgated

On 1st July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ZIQI BAI
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Miss A Everett, Senior Home Office Presenting Officer

For the Respondent: Mr D Lemer of Counsel

DETERMINATION AND REASONS

Introduction and Background

1. The Secretary of State appeals against a determination of Judge of the First-tier Tribunal J Pacey, promulgated on 20th March 2014.
2. The Respondent before the Upper Tribunal was the Appellant before the First-tier Tribunal and I will refer to him as the Claimant.

3. The Claimant is a Chinese citizen born 5th March 1992 who on 30th September 2013 applied for further leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant under the Points-Based System.
4. The application was refused on 8th November 2013 because the Claimant was not awarded the 30 points claimed for Attributes under Appendix A in relation to his Confirmation of Acceptance for Studies (CAS). This was because the Claimant had failed to provide with his application his Studentship Certificate and his Transcript of Academic Record from Guangdong University of Foreign Studies. The application was therefore refused under paragraph 245ZX(c) with reference to paragraph 120SD(a) of Appendix A of the Immigration Rules.
5. The Claimant appealed and requested that his appeal be determined on the papers. Judge Pacey (the Judge) recorded in paragraph 8 of her determination “that the relevant documents were provided with the application to the university.” Therefore the judge found that the Claimant had discharged the burden of proof and allowed the appeal under the Immigration Rules.
6. The Secretary of State applied for permission to appeal contending that the judge was wrong to allow the appeal on the basis that the documents had been provided with the application to the university. It was contended that the documents had to be supplied to the Secretary of State with the application.
7. Permission to appeal was granted by Judge of the First-tier Tribunal Davies in the following terms;
 - “1. The Respondent seeks permission to appeal against the decision of the First-tier Tribunal (Judge Pacey) who, in a determination promulgated on 20th March 2014 allowed the Appellant’s appeal against the decision to refuse him leave to remain as a Tier 4 (General) Student under the Points-Based System.
 2. The judge has not addressed in any way the issue central to the appeal.
 3. On finding that the relevant documents as required by the Immigration Rules had not been served on the Respondent, as required, she was clearly in error in concluding that submission of the documents to the university met the provisions of the Immigration Rules.
 4. The grounds and the determination do disclose an arguable error of law.”
8. Following the grant of permission the Tribunal issued directions that there should be a hearing before the Upper Tribunal to decide whether the First-tier Tribunal determination should be set aside.

The Secretary of State's Submissions

9. Miss Everett indicated that she had had the opportunity to consider Mr Lemer's skeleton argument, and accepted that it was open to the Tribunal to consider that the judge had made a typographical error in paragraph 8 of her determination for the reasons given in the skeleton argument.
10. Miss Everett indicated that it was open to me to make such a finding in which case the error made by the judge would not be material and the decision would stand.
11. If I decided that there was a material error and the decision was set aside and re-made, Miss Everett accepted that there was evidence to prove that the required documents had been sent on the Claimant's behalf with the application to the Respondent and therefore his appeal should be allowed.

The Claimant's Submissions

12. Mr Lemer relied upon his skeleton argument. The first submission was that if the determination was read in a whole, it was clear that the judge had considered what evidence was sent with the application to the Home Office. Mr Lemer therefore suggested paragraph 8 should be read in context, and that it contained a typographical error, and it should read *with the application from the university, or alternatively with the application to the Home Office*.
13. However in the alternative, if I considered that the judge had materially erred by considering what documents had been sent to the university rather than to the Home Office, and if the decision was set aside, Mr Lemer submitted that the Claimant's appeal should be allowed as there was substantial evidence that the required documents had in fact been sent to the Home Office. The evidence included the Claimant's application form confirming the documents were enclosed, and his witness statement, together with a letter from the UKBA Compliance Officer of Northampton University.

My Conclusions and Reasons

14. The judge erred in paragraph 8 of her determination. The documents, need to have been sent to the Home Office with the application. It was therefore incorrect to record that the relevant documents were provided with the application to the university.
15. However I do not find the error to be material. I agree with the submissions made by Mr Lemer, and have taken into account that Miss Everett accepted that paragraph 8 of the determination could be interpreted as being a typographical error.

16. Having read the determination as a whole, and in particular taking into account paragraph 7, in which the judge records that the Claimant stated that he supplied the documents, and that there is an email and letter of support from the University of Northampton, confirming that those documents were submitted to the Home Office, I do not find the error to be material.
17. The judge was, in my view, satisfied that the documents were sent to the Home Office by the University of Northampton, who prepared the application on behalf of the Claimant. The judge took into account the evidence that indicated this to be the case. I am therefore satisfied that paragraph 8 of the determination contains a typographical error, and that the judge meant to record the relevant documentations were provided with the application by or from the university, as it was the university that submitted the application.
18. Therefore the error made by the judge is not material and the determination stands.

Decision

The making of the decision by the First-tier Tribunal did not involve the making of an error on a point of law such that it must be set aside. The appeal of the Secretary of State is dismissed. The decision of the First-tier Tribunal stands.

Anonymity

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 20th June 2014

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The fee award made by the First-tier Tribunal stands.

Signed

Date 20th June 2014

Deputy Upper Tribunal Judge M A Hall