



IAC-AH-KEW-V1

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

Appeal Number: IA/02423/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 28 October 2015**

**Decision & Reasons Promulgated
On 15 December 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**PARMINDER JIT KAUR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Harris

For the Respondent: Mrs Pettersen, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Parminder Jit Kaur, was born on 20 June 1976 and is a female citizen of India. The appellant was refused further leave to remain as a Tier 4 (General) Student by a decision of the respondent dated 24 December 2014. She appealed to the First-tier Tribunal (Judge Kempton) which, in a decision promulgated on 14 April 2015, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. Granting permission, Upper Tribunal Judge McWilliam wrote:

“It is obvious that the appeal cannot succeed under substantive Rules relating to students. However, it is arguable that the judge should have determined the appeal under paragraph 322(10) of the Rules and determine the issue concerning whether she is a genuine student.”

3. The parties agree that the appellant cannot succeed in her appeal against the refusal for further leave to remain as a student. The appellant could not meet the requirements of paragraph 245ZX(a) of HC 395 (as amended). As Judge Kempton noted [10], “it was accepted that the appellant could not succeed in her appeal as she had no valid CAS.” The judge went ahead and heard the appeal regarding the genuineness of the appellant as a student which had, additionally, led to her being refused further leave to remain under paragraph 322(10):
4. The appellant had been invited to attend an interview in connection with her application scheduled for 20 October 2014. She did not attend. On the basis of her non-attendance, the respondent concluded that the appellant was not a genuine student. The appellant contends that she was told by her sponsor (Cardiff Metropolitan University) that, because she had no CAS, it was pointless of her to attend the Home Office interview. Having heard the evidence, the judge concluded as follows [19]:

“I was asked to decide if the appellant is a genuine student. I am not in a position to say conclusively that she is. However, on the other hand, I am not in a position to say that conversely, namely that she is not a genuine student, as there is no conclusive evidence either way. “
5. It is perhaps arguable that the judge need not have embarked upon an examination of the evidence concerning the appellant’s failure to attend the Home Office interview. Given that the appellant accepted that she could not succeed under the Immigration Rules and was not pursuing an appeal on Article 8 ECHR grounds, it would have been enough for the judge to have dismissed the appeal. However, having embarked upon a fact-finding exercise regarding the interview and the reasons for the Appellant’s failure to attend it, it was reasonable to expect the judge to make a positive finding one way or another; it was not enough for the judge to leave the matter unresolved. In my opinion and having considered the evidence carefully, I find that it is likely, on the standard of the balance of probabilities, that the appellant was told by her sponsor that, given she had no CAS, it was pointless for her to attend the Home Office interview. The respondent concluded from the fact that the appellant did not attend that she was not a genuine student at all. It may well be the case that the appellant is not a genuine student but the reason given by the respondent (the appellant’s failure to attend the interview) did not of itself and (in the light of my finding) without further evidence establish that as a fact.
6. Whether my observations may prove of any assistance to this appellant in the future should she make an application from abroad for leave to enter is a matter for her and her advisers and, ultimately, the Entry Clearance Officer. Because the appellant cannot succeed in reversing the decision to

refuse her further leave to remain, I dismiss her appeal against the First-tier Tribunal's decision.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 10 November 2015

Upper Tribunal Judge Clive Lane

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

Signed

Date 10 November 2015

Upper Tribunal Judge Clive Lane