



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

Appeal Number: IA/07218/2014

THE IMMIGRATION ACTS

**Heard at Field House
Decision given orally on 10 February 2015**

**Decision & Reasons Promulgated
On 28 April 2015**

Before

**MRS JUSTICE THIRLWALL
UPPER TRIBUNAL JUDGE DAWSON**

Between

NAZIMA MUSARAT

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E King, instructed by Rahman & Company

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, who is a national of Pakistan where she was born on 10 November 1983, has been granted permission to appeal the decision of First-tier Tribunal Judge Parkes. In his decision dated 2 July 2014, the judge gave his reasons for dismissing the appeal by the appellant against the decision of the respondent dated 31 December 2013 refusing to vary her leave to remain and making a decision to remove the appellant.

2. The background to the case is this. The appellant had made application in-country on 3 December 2013 for further leave to remain as a Tier 4 (General) Student Migrant and for a biometric residence permit. She was awarded the 30 points sought for *Confirmation of Acceptance for Studies* but none of the points sought for *Maintenance (funds)*. The reasons the respondent refused to award those points were that the appellant had failed to show she was in possession of at least £1,600 for a consecutive 28 day period to meet the Tier 4 (General) Student maintenance requirements. Specifically, the bank statement submitted showed funds between 20 November 2013 and 4 December 2013 and did not demonstrate the consecutive 28 day period required under the rules.
3. The grounds relied on by the appellant in her appeal against that decision to the First-tier Tribunal explained that she had given her college (who had made the application on her behalf) her bank statements for the period 9 September 2013 until 4 December 2013. She speculates in those grounds that either those statements had been mislaid by her college who had completed the application on her behalf or they may have been mislaid by the UK Border Agency. She also relied on a failure by the respondent to follow the policy of evidential flexibility and a failure to consider *CDS (PBS: "available": Article 8) (Brazil) [201] UKUT 00305(IAC)* and *Pankina v SSHD [2010] EWCA Civ 719*. Finally the appellant argued that the decision was not otherwise in accordance with the law.
4. The judge heard evidence from the appellant who reiterated that she had contacted the college who told her that they had sent all the documents. He concluded that the burden was on the appellant and that the evidence did not show that she had submitted the required bank statements or that she gave them to the college to submit on her behalf.
5. After setting out the evidence, the judge set out his reasons for his finding that the appellant had not submitted the required bank statements. I quote specifically from the determination at [10]:

"If it was the fault of the college that would not avail her but there is no evidence to show that that is the case. There was nothing in the information before the Secretary of State to suggest that there was other information readily available that would fill the evidential gap and so I find that paragraph 245AA was not engaged."
6. There are two grounds of challenge. The first is a complaint that the judge should have identified the weight he attached if any to the appellant's account. This relates to the central issue which was whether the bank statements had reached the Secretary of State, as it was her case they had not. The appellant could only and could go no further than to establish that she had provided the statements to the college. She was not in a position to say that the college had then sent them to the Secretary of State. This is at best a second-hand account that was to be balanced against the assertion that the statements had not been received and in such circumstances the judge was reasonably entitled to look for direct evidence from the college. That evidence was not there and could **easily have been provided**. We conclude that the judge was entitled to observe in paragraph 8 of the decision that

“The absence of evidence directly from the college to confirm what she says is troubling and does not assist her case.”

7. Miss King on behalf of the appellant candidly accepts that there was no evidence from the college before the judge as to what they did and it is significant that even today there is silence from the college on this aspect.
8. The second ground is essentially a reworking of the first. It is stated that the appellant’s evidence should have been assessed in its own right without being subjected to the requirement as appears from the determination of corroborative evidence. This misses the point. As we have observed, the most the appellant could say was that she had given the documents to the college and the college told her they had sent them on to the Home Office. The fundamental difficulty was the absence of anything from the college.
9. As we have observed, it was reasonable to expect the college to have provided evidence of the documents that they had sent to the Secretary of State and in the absence of that evidence, we are satisfied that the judge came to a conclusion rationally open to him on the material before him and gave adequate reasons for dismissing the appeal.
10. Accordingly we are not persuaded that the judge erred in law and we therefore dismiss the appeal.

Signed

Date 24 April 2015



Upper Tribunal Judge Dawson