



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/11412/2014

**THE IMMIGRATION ACTS**

Heard at: Columbus House, Newport  
On: 3 February 2015

Determination Promulgated  
On 5 February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

FUYUANG ZHENG  
(Anonymity direction not made)

Respondent

**Representation**

For the Appellant: Mr I Richards, Home Office Presenting Officer  
For the Respondent: In person

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against the determination of First-tier Tribunal Judge Troup in which he allowed the appeal of Ms Zheng, a citizen of China, against the Secretary of State's decision to refuse to vary leave to remain as a Tier 4 (General) Student migrant. I shall refer to Ms Zheng as the Applicant, although she was the Appellant in the proceedings below.
2. The application under appeal was made on 3 February 2014 and was refused by reference to paragraph 245ZX(d) of the Immigration Rules (HC395) on 18 February 2014. The Applicant exercised her right of

appeal to the First-tier Tribunal. This is the appeal which came before Judge Troup on 28 May 2014 and was allowed. The Secretary of State applied for permission to appeal to the Upper Tribunal. The application was granted by Upper Tribunal Judge Grubb on 4 November 2014 in the following terms

The Respondent's grounds identify an arguable error of law. As the appellant could not establish that she met the maintenance requirement on the documentation submitted with her application, it is arguable that it was irrelevant to the issue of whether she met the requirements of the Rules that this was the fault of the educational institution. The Judge did not consider any issue of fairness but this would have been a difficult argument to sustain in any event (see Rahman v SSHD [2014] EWCA Civ 11 at [32]).

3. At the hearing before me Mr Richards appeared to represent the Secretary of State. The Applicant appeared in person and was not legally represented. As the Applicant was not legally represented I carefully explained the nature of these proceedings to her and summarised the reasons given by the Secretary of State for challenging the decision of the First-tier Tribunal.

### **Background**

4. The background to the appeal is detailed above. The facts, not challenged, are that the Applicant was born in China on 17 February 1989. She came to the United Kingdom with leave to enter as a Tier 4 (General) student expiring on 24 February 2014. On 3 February 2014 the Applicant made an in time application for further leave to remain. The application was made to enable the Applicant to continue her studies at Cardiff Metropolitan University where the Applicant was studying for an MBA degree. The Applicant was assisted in making her application by Cardiff Metropolitan University and her correspondence address on the application was shown as 'Attn Laura Evans, Cardiff Met Int Office'.
5. The application was refused on 18 February 2014. The basis of the refusal was that the Applicant needed to show that she had access to at least £7,200 for a consecutive 28 period prior to her application. The bank statement submitted in support of her application covered the period 1-28 January but on 27 January 2014 the balance had fallen to -£11.29.
6. With her Notice of Appeal to the First-tier Tribunal the Applicant submitted a letter from Laura Evans the International Student welfare officer at Cardiff Metropolitan University. The letter was written in very clear terms. The university takes responsibility for checking that a student's documents including their bank statements meet the UKBA requirements and only when these documents have been checked is the application submitted. In this case the university made 'a clear error' by failing to submit all of the documents which would have clearly shown

that the Applicant held the necessary funds. Indeed the university goes so far as to say that a letter from the Applicant's bank which should have been submitted with the application was 'misplaced' by the university. In short the Applicant held the necessary funds, she had the bank statements to prove it and the failure to submit all of the documents required was entirely the fault of the university and the university takes full responsibility.

7. It is surprising, to say the very least, that the Secretary of State on receiving this Notice of Appeal with full acceptance of responsibility by the university and the evidence to show that the Applicant met the requirements of the rules did not simply withdraw the decision under appeal and re-process the application. Instead the matter proceeded to an appeal hearing on 28 May 2014 where First-tier Tribunal Judge Troup allowed the Applicant's appeal. It is that decision that is now challenged by the Secretary of State.

### **Submissions**

8. On behalf the Secretary of State Mr Richards relied on the grounds of appeal to the Upper Tribunal and referred to the decision in Rahman v SSHD [2014] EWCA Civ 11. This makes it clear that the responsibility for ensuring that the application is correctly submitted and meets the requirements of the Rules lies with the applicant and that there is no unfairness in holding applicants to this responsibility. The Judge was clearly wrong in finding that the Applicant met the requirements of the rules when the rules required specific evidence and that evidence had not been submitted.
9. The Applicant said that it was unfair that her application had been rejected when the university accept that it was their mistake. It is unfair to expect her to accept responsibility for their mistake. She trusted them. They made a mistake and they have apologised for that mistake. She has the required money. This has caused her a substantial problem. She has been unable to travel for almost a year. It has had a substantial impact on her life in the United Kingdom. This is a problem that needs to be sorted out for the future for the sake of others. Most of the universities have this problem. The university administrative staff are asked to take responsibility for student's applications to help students to get things right. Where the university makes mistakes this has a serious impact upon the student.

### **Error of law**

10. I explained to the Applicant that it was regrettable that the decision of the First-tier Tribunal contained a clear error of law and that the decision

would be set aside and remade dismissing the Applicant's appeal. I reserved my written reasons.

11. In my judgement the decision of the First-tier Tribunal discloses a clear and material error of law. The Immigration Rules require specified evidence that the maintenance requirements of the Rules are met to be submitted with the application. The required evidence was not submitted with this application. Whether that was the fault of the university (and I am completely satisfied that it was) or the fault of the Applicant is immaterial. In this case the specified evidence was not submitted with the application so the appeal must fail.
12. The Applicant submits that the decision is unfair. In my judgement it is not. The Respondent is following the rules and it cannot be unfair to follow the Rules. The fact that I consider, as stated above, that the Respondent could and should have withdrawn the decision when it became clear, after the decision had been made, that the Appellant met the requirements of the rules does not make the decision unfair. I have no doubt that the effect on the Appellant has been and continues to be unfair but this unfairness is the result of the mistake made and admitted by the university and prolonged by the Secretary of State's failure to take a pragmatic approach.
13. It follows that I must allow the appeal of the Secretary of State, set aside the decision of the First-tier Tribunal and re-make the decision and dismiss Applicant's appeal. In doing so I can only express the hope that the Secretary of State will look carefully and expeditiously at any application that the Applicant now makes with a view to granting the appropriate leave if the Applicant currently meet the requirements of the Immigration Rules.

### **Summary**

14. The decision of the First-tier Tribunal involved the making of a material error of law. I allow the Respondent's appeal and I set aside the decision of the First-tier Tribunal.
15. I remake the decision by dismissing the Applicant's appeal.

**Signed:**

**Date:**

**J F W Phillips  
Deputy Judge of the Upper Tribunal**