



IAC-FH-CK-V2

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

Appeal Numbers: IA/26691/2014  
IA/26640/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16 June 2015  
Determination prepared 16 June 2015**

**Determination Promulgated  
On 9<sup>th</sup> July 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**MRS KIRANDEEP KAUR (FIRST APPELLANT)  
MR BALJINDER SINGH (SECOND APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Ms M Malhotra, Counsel instructed by Shri Venkateshwara  
Solicitors

For the Respondent: Ms A Brocklesby-Weller, Senior Presenting Officer

**DETERMINATION AND REASONS**

1. The first Appellant, a national of India, date of birth 10 May 1985, appealed against the Respondent's decision, dated 12 June 2014, to refuse an application made on 28 March 2014 for leave to remain in the United Kingdom as a Tier 4 (General) Student

Migrant under the points-based system and in combined decisions the Respondent made removal directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The first Appellant's application was refused with reference to paragraph 245ZX(c) with reference to paragraph 115A of Appendix A and paragraph 245ZX(d) of the Immigration Rules HC 395 (as amended). In particular the matter was refused because there was no valid Confirmation of Acceptance for Studies (CAS).
3. The second Appellant, a national of India, date of birth 15 March 1985 appealed against a decision, dated 12 June 2014, to refuse his leave to remain as a dependent partner of a points-based system migrant and similarly to make removal directions under Section 47 of the 2006 Act.
4. The appeal against those decisions came to be considered by First-tier Tribunal Judge K St John Wiseman (the judge), who on 23 November 2014 dismissed their appeals. It followed although the judge made no reference to it that their appeals against removal directions must similarly have failed.
5. Permission to appeal the judge's decision was refused but renewed and Deputy Upper Tribunal Judge Saini on 5 May 2015 granted permission in the following terms:

"... There is only one ground [contained in paragraph 8(v)(b)] upon which I am minded to grant permission as it forms the basis of an arguable error in the FtTJ's determination whereby the FtTJ failed to consider the fact that the Respondent did not reply to the Appellant's request to have her passport or a certified copy of it returned to her so that she could sit for her English test, without which she would not be in a position to obtain a CAS. That evidence does not appear to have been challenged by the Respondent and resounds with the 'Patel' policy seen in *Kaur (Patel fairness: respondent's policy) India [2013] UKUT 344 (IAC)* and the need applicants have for certified copies of their passports where these are in the Home Office's possession."
6. The issue therefore was whether or not factually there had been an error of law by the judge in failing to understand the nature of the claims.
7. The judge's decision was not wholly clear on a number of points but it was clear that at some stage prior to the date of application on 28 March 2014, when the Appellants had applied for leave to remain as student and student dependant that the first Appellant could not meet the relevant requirements because she had not passed examinations which would have exempted her from the requirement to provide evidence of English language skills. Rather a provisional letter was written by the Sponsor indicating that a CAS could be issued but it was dependent upon the first Appellant passing the relevant language test.
8. It is said that the Appellant, her husband and her then representatives made telephone requests for the return of her passport to enable her to undertake an English language test because the relevant providers required either the passport or a certified copy issued by UKBA or the Home Office. There are no particulars of when

and to whom these requests were made nor of any response. It was unfortunate that there was nothing in any documentary form to evidence the claims of repeated requests as was submitted to me.

9. The Appellant's later representatives, a different firm, wrote to the Respondent by letter dated 15 September 2014 essentially asking for the original passport or confirmation of a passport or an attested copy to be provided. The letter postdates the Respondent's decision. The letter which I was shown does not set out any antecedent history of requests being made by either the Appellants or the Appellants' then representative(s).
10. In the circumstances it was self-evident that at the date of the Respondent's decision, 21 June 2014, the Appellants could not produce the relevant evidence concerning the first Appellant's English language skills. It seemed to be accepted that there was no reply by UKBA or the Home Office to the representatives' letter of 15 September 2014. In the circumstances that matters not given the fact that the refusal had taken place some three months previously.
11. The difficulty the first Appellant faced arose from the failure of her dissertation, no doubt her personal circumstances being a young mother and the fact that she may have been ill-advised. I have nothing from the first Appellant's then representatives which indicated that they accepted any fault on their part nor do I know if they have actually been pressed to explain their conduct which it is said they undertook.
12. I am therefore left with the position that the first Appellant at the time of application knew an English language test had to be provided because she could not longer, as she had hoped, rely on the course of study she had been undertaking and did not provide that information so as to enable a Confirmation of Acceptance to be provided in time for the Appellants' application.
13. Assuming as I do for the moment that the Appellants were ill-served by the advice of former representatives, not I emphasise Shri Venkateshwara Solicitors, that unfortunately does not demonstrate any unfairness by the Respondent or unfairness in the Respondent determining the application on the matters and documents which had been submitted nor as I understand it was there any request made to stay the consideration of the March application pending providing the relevant English language test evidence.
14. In the circumstances therefore, assuming that the Appellants were in fact ill-served by those representing them at the material time, it does not seem to me that demonstrates any error of law by the Respondent. I have considered the statement of the first Appellant and in particular the paragraphs making reference to attempting to contact the Home Office. The statement is dated 4 or 7 November 2014 and the judge presumably had that evidence before him. In the circumstances it seemed to me that that information does not demonstrate any error of law by the judge nor any unlawful conduct or unfairness by the Respondent to the appeals in failing to provide the first Appellant's passport. I do not find the judge made any arguable

error of law in the assessment of the legal requirements which the first Appellant ultimately could not meet.

15. The judge also dealt with Article 8 of the ECHR which in the context of the Appellant being a student was the more difficult to establish in any event; but the grounds do not raise the issue of Article 8 as a material error of law by the judge. If it had been it does not seem to me on the face of it there would have been any merit in it. I note that in granting permission the judge who dealt with the matter in May 2015 did not find there was any obvious error of law on the part of the Respondent or indeed the judge.
16. The original Tribunal made no error of law. The original Tribunal's decision stands.

**NOTICE OF DECISION**

The appeal is dismissed.

Signed

Date 7 July 2015

Deputy Upper Tribunal Judge Davey