



IAC-BH-PMP-V2

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

Appeal Numbers: IA/27049/2014
IA/27050/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28 July 2015**

**Decision & Reasons Promulgated
On 11 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**MRS SARITA KARKI (FIRST APPELLANT)
MR ANWAR HUSAIN (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Khan of Counsel

For the Respondent: Ms Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Nepal. The first appellant was born on 25 October 1987 and the second appellant, her husband and dependant was born on 1 March 1987. The appellants appealed against the respondent's decision dated 13 June 2013 to refuse to vary leave to remain and to make removal directions under s.47 of the Immigration, Asylum and Nationality Act 2006.

2. The application of the first appellant, a Tier 4 (General) Student Migrant was refused on the basis that she had failed to produce evidence of maintenance (funds) to meet the requirements of Appendix C of the Immigration Rules. The refusal letter set out that the first appellant had provided bank statements but had not shown the required maintenance fee of £3,300 for a consecutive period to meet the Tier 4 (General) Student Migrant maintenance requirements under paragraph 1A of Appendix C of the Rules. The notice of decision recorded that bank statements had been provided by the appellant's husband Anwar Husain but the information was rejected because he did not meet the particular requirement of paragraph 13 of Appendix C as being a source of funds. The only source of funds provided under paragraph 13 of Appendix C were those funds held by the applicant (where there was a sole or joint account holder); and/or the applicant's parents or legal guardian and/or official financial sponsors.
3. The second appellant's application for leave to remain as the dependant of a Tier 4 Migrant was refused solely on the basis of the refusal of the first appellant's application and the Secretary of State not being satisfied that he was the spouse of a person who had valid leave to remain as a points-based migrant. He fell for refusal under paragraph 319C(b) of the Rules.
4. The appellants' appeals were allowed by Judge of the First-tier Tribunal Davey (the judge) in a decision promulgated on 27 February 2015. He found that with the evidence provided by the first appellant at the hearing, it was plain that the second appellant had provided the funding, had met the tuition fees and that he held the necessary funds in the Kumari Bank of Nepal. The first appellant having previously had a bank account in Nepal but at the Kathmandu Bank Limited, had closed that account when she came to the United Kingdom and opened an account here with Lloyds Bank plc. The judge found the cause of the refusal was inaction on the part of the appellants' representatives, no longer in business who had failed to communicate problems over documentation to the appellants. The judge found there was no challenge to the credibility of those problems and their cause being entirely outwith the conduct of the appellants.
5. The judge heard argument that the Immigration Rules were irrational and did not address, presumably because of oversight, the provision that a husband might provide for his wife. The judge was taken to the Tier 4 guidance. He could find nothing there in relation to Appendix C on alternative sources of funding, outside the express provision of [13] of Appendix C. Nevertheless, the judge noted in relation to Appendix FM sources for meeting the financial requirements that it contemplated income and cash savings of an applicant's partner such that in those circumstances it seemed to the judge in the context of Appendix FM that the Secretary of State had in mind that there would be partners and/or spouses who could make a financial contribution. As he put it, the only sensible explanation which struck him was that it was assumed that a student's financial support would come from parents, legal guardians and official sponsors and the possibility of mature married students with families, appeared to have been overlooked by the provisions in Tier 4.

6. The judge found there was nothing to suggest the second appellant's funds were not available to meet the maintenance costs. There was no dispute that the second appellant had funded the fees for the course.
7. As the Presenting Officer was unable to provide any explanation to justify the rationale for excluding a husband's funding, the judge found the respondent's decision showed no rational basis or any reasoning other than by the terms of the Rules. He compared the situation with Tier 1 applications that permitted a much wider group of sponsors and found it hard to find any possible reason for the limitation on a bona fide sponsor for a Tier 4 mature student. He found it was undisputed before him that at the material date the relevant funding was in place to meet the maintenance requirements for the first and second appellants such that he found there was no basis for refusal, all other points being accumulated under the Tier 4 requirements. Equally, in those circumstances there was no basis to refuse the second appellant's application.
8. In conclusion, the judge found the Secretary of State had made an error of law and allowed the appeals to the extent that they would be remitted to be remade by the Secretary of State, no doubt taking into account the clear financial evidence provided by the second appellant.
9. The grounds claimed the judge made a material error of law. The account in the name of the appellant's husband was not permitted by the Rules as his wife, the student applicant, was neither the sole or joint account holder of that account.
10. Judge Pooler granted leave to appeal the judge's decision on 22 April 2015. He found it was arguable that the judge erred in law by failing to direct himself in terms of the Immigration Rules and in particular those in Appendix C, [13] as to the source of funds.

Submissions on Error of Law

11. Ms Isherwood submitted that the judge's decision could not stand. He was dealing with a Tier 4 application and the Rules clearly defined where the evidence was to come from.
12. Mr Khan submitted that the judge found what he described as a gap in the Rules. He drew my attention to [7] and [8] of the judge's decision. The judge was entitled to fill the gap by reference to other Rules. Mr Khan submitted that the Rules could not be applied in a draconian fashion and that the judge was entitled to take a pragmatic approach.

Conclusion on Error of Law

13. The judge examined the Tier 4 guidance and found it was silent on alternative sources of funding. It might well be that the Presenting Officer was unable to provide or argue any explanation to justify the rationale of excluding the funding provided by the appellant's husband, however, the judge had no discretion in the

matter. He was not entitled to take a pragmatic approach. The first appellant clearly did not meet the requirements of the Immigration Rules.

14. The judge erred for the reasons I have set out in allowing the appeal. His decision is set aside. I re-make the decision by dismissing the appeal.

Decision

15. Appeal dismissed

Anonymity direction not made.

Signed

Date 28 July 2015

Deputy Upper Tribunal Judge Peart

TO THE RESPONDENT
FEE AWARD

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

Signed

Date 28 July 2015

Deputy Upper Tribunal Judge Peart