



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/29512/2014

THE IMMIGRATION ACTS

Heard at Field House
On 28 January 2015

Decision Promulgated
On 29 January 2015

Before

THE HON. MR JUSTICE GOSS
UPPER TRIBUNAL JUDGE O'CONNOR

Between

APRILYN ALMONGUERA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Appiah, Counsel instructed under the public access scheme

For the Respondent: Mr S Walker, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of the Philippines, born 1st April 1984. On 13 June 2014 she applied for leave to remain as a Tier 4 (General) Migrant pursuant to paragraph 245ZX of the Immigration Rules. This application was refused by the Respondent in a decision dated 8 July 2014 and on the same date the Respondent made a decision to remove the appellant pursuant to section 47 of the Immigration Asylum and Nationality Act 2006.
2. The appellant provided two bank statements to the respondent with her application, each relating to the same account held by her at a London branch of the Metro Bank.

The first bank statement provides an 'Account Summary' from 1 May 2014 to 31 May 2014 and includes details of the balance of the account on any given date as well as the transactions that took place in relation to such account during this period. The second statement from the Metro Bank is dated 10 June 2014 and specifies an opening balance of £891.23 on 2 May 2014, a closing balance of £2100.89 and details of the transactions which took place in relation to the account in the intervening period.

3. In her decision of 8 July the respondent concluded that the appellant was required to demonstrate that she had held a sum of £1600 in her bank account for a consecutive 28 day period prior to the date of application. She then identifies the relevant 28 day period as being between 3 May 2014 and 30 May 2014, concluding that the appellant had not held the necessary funds in the account continuously during such period.
4. The appellant appealed this decision to the First-tier Tribunal. This appeal was dismissed by Judge Saffer in a determination promulgated on 1 October 2014. The matter comes before us with the permission of Judge De Haney, granted on 26 November 2014.
5. At the hearing before us Mr Walker conceded that (i) the First-tier Tribunal's determination contains an error on a point of law and should be set aside and (ii) that the appellant meets the requirements of paragraph 245ZX of the Immigration Rules and consequently that her appeal should be allowed. This had also been our preliminary view and we now briefly set out the reasons why this is so.
6. The First-tier Tribunal erred, as did the Secretary of State, by, *inter alia*, failing to correctly identify the appropriate start and end dates for the relevant 28-day period during which the appellant was required to demonstrate that she had continuously held the necessary funds (£1600) in her account.
7. By paragraph 1A(h) of Appendix C to the Immigration Rules the end date of the relevant 28 day period is to "*be taken as the date of the closing balance on the most recent of the specified documents...*" In the instant matter the date of the closing balance on the most recent bank statement from Metro Bank is the 10 June 2014. The relevant 28-day period for the purposes of Appendix C to the Immigration Rules therefore begins on 13 May 2014 and ends on 10 June 2014. The First-tier Tribunal incorrectly identified the end date for the 28 day period as being the 3 June 2014 and subsequently dismissed the appeal on the basis that the appellant held less than £1600 in her bank account on 9 May 2014.
8. This error was material to the First-tier Tribunal's determination because when one analyses the bank statement of 10 June 2014 it is plain that the appellant held in excess £1600 in this account continuously between 13 May 2014 and 10 June 2014. She therefore met the maintenance requirements set out in Appendix C of the Rules. Accordingly we set aside the First-tier Tribunal's determination.
9. The respondent has not identified any other reasons why it is said that the appellant does not meet the requirements of paragraph 245ZX of the Rules and we have found

the respondent to be incorrect in the one reason she did seek to rely upon. We therefore conclude that the appellant meets the requirements of paragraph 245ZX of the Immigration Rules and her appeal is accordingly allowed.

Decision

For the reasons given above:

- (i) The decision of the First-tier Tribunal is set aside; and
- (ii) Upon re-making the decision for ourselves we allow the appellant's appeal on the basis that the Secretary of State's decision was not in accordance with the Immigration Rules.

Signed:

A handwritten signature in black ink, appearing to read 'M. O'Connor', with a horizontal line underneath.

Upper Tribunal Judge O'Connor
Date: 28 January 2015