



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

Appeal Number: IA/22806/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 29th June 2016**

**Decision & Reasons
Promulgated
On 8th July 2016**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**RAJWINDER KAUR
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mrs R Pettersen, a Senior Home Office Presenting Officer
For the Respondent: Mr S Malik of HUMD Solicitors

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Cox made following a hearing at Bradford on 10th December 2015.

Background

2. The claimant is a citizen of India born on 15th October 1985. She entered the United Kingdom with leave as a Tier 4 Student under the points-based system on 30th August 2009, and was subsequently granted further leave to 20th September 2014.
3. On 27th May 2014 the Secretary of State told the claimant that her college's licence as a highly trusted sponsor had been revoked and her leave would be curtailed on 1st August 2014.
4. On 31st July 2014 she made a combined application for further leave to remain as a Tier 4 (General) Student but was refused under the general grounds of refusal, paragraph 322(1A) and 322(3).
5. The Secretary of State believed that the claimant had been working in the United Kingdom without immigration permission to do so and therefore that leave to remain, or variation of leave to enter or remain, should follow the normal course and be refused.
6. She also refused under paragraph 322(1A), which is a mandatory ground on the basis that the claimant had made false representations having said that she had not been working in the UK without permission.
7. It was the claimant's case that she was on a work placement with Inglewood Residential Home Limited, for which she was last paid in August 2014, and which was allowed under her conditions of stay. She had been on maternity leave between March 2013 and April 2014 and then resumed her placement from April 2014 so as to complete her course. She relied on the Home Office guidelines which state that Tier 4 work placements which exceed the permitted time limit due to a statutory requirement are exempt from time limits.
8. The judge concluded that the claimant was entitled to return to her work placement in April 2014, although once her college licence had been revoked she was no longer on a work placement with a highly trusted sponsor, and therefore, by August 2014, she would have been working contrary to the conditions of her stay.
9. The judge accepted that, even if the claimant did not know whether or not she was allowed to work, she ought to have had doubts and he did not know whether she did anything to clarify her situation. On the other hand she stopped working at the residential care home in August 2014 which was consistent with her account that she was only at the home as a part of her work placement.
10. He concluded as follows:

"Further the burden of proof is on the respondent. The respondent's original decision was found not to be in accordance with the law and the appellant states that this was so as to give the respondent an opportunity to interview her. The respondent has not provided any

information to suggest that the appellant's account of what happened at the earlier appeal is erroneous.

On the totality of the evidence I find that the respondent failed to discharge the burden of proof. I am satisfied that the appellant was working in breach of the conditions of her stay and it is possible that she may have known that she was not allowed to continue with her work placement. However in my view it is more likely that she genuinely believed that she was allowed to finish her work placement. I rely on the fact that she stopped working in August 2014.

Further the respondent choose not to interview the appellant and in the absence of an interview I am satisfied that the respondent has failed to demonstrate that the appellant deliberately gave false information.

Accordingly I am satisfied that the respondent acted unlawfully in relying on Rule 321(1A) of the Immigration Rules.

As to rule 323, this is a discretionary ground of refusal. Although I am satisfied that the appellant was working in breach of her conditions, the respondent has failed to satisfy me on the balance of probabilities that the appellant knew she was working in breach of her conditions. In these circumstance I am satisfied that the respondent ought to have exercised her discretion in the appellant's favour and the respondent erred in law in seeking to rely on rule 322(3)."

The Grounds of Application

11. The Secretary of State sought permission to appeal on the grounds that the judge had made a material error of fact. There was no documentary evidence to show that the claimant was on a work placement. The Tribunal had listed the deficiencies in the case and yet speculated in her favour despite her having not appeared at the hearing to support her evidence and failing to provide any independent evidence from the residential home.
12. Permission to appeal was granted by Judge Adio on 23rd May 2016 for the reasons stated in the grounds.

Submissions

13. Mrs Pettersen relied on her grounds and submitted that, on the evidence, the judge had reached an impermissible conclusion.
14. Mr Malik submitted that the key to the determination was that the judge had properly applied the correct standard of proof and the respondent had failed to prove her case to the requisite standard; there was no error in the judge so finding.

Findings and Conclusions

15. It has always been the claimant's case that she was on a work placement between April and August 2014.
16. In her original grounds of appeal she said that the payments made to her were maternity pay as she had undertaken a work placement as a part of her course which was permitted under her previous grant of leave to remain.
17. Mrs Pettersen observed that the claimant had not given oral evidence before the judge but of course there was no obligation on her to do so. The fact that she did not is not an adequate basis for discounting her case.
18. It is right that, before the immigration judge, there was no direct evidence from the residential home that the claimant was on a work placement, and he weighed the omission up in assessing the credibility of the case. Moreover the judge was entitled to rely on the fact that she gave up working at the residential care home in August 2014 which was consistent with her account that she was only there as a part of her work placement. The work at the care home is plainly highly relevant to her diploma which is in healthcare management. He did have a copy of her immigration card which states that she was entitled to work on work placements.
19. In summary, the Secretary of State made her decision on the basis that she had information from the Inland Revenue that the claimant had been paid in August 2014. There was no other evidence from the respondent. Against that the judge had to weigh the claimant's claim that she genuinely believed that she was allowed to continue her work placement which was a part of her course.
20. It was open to him to come to the view that this was her genuine belief and there is no error of law in his so doing.
21. Accordingly there can be no complaint that the appeal was allowed under Rule 322(1A). Since 322(3) is a discretionary ground for refusal, he was perfectly entitled to conclude that the Secretary of State should have exercised discretion in her favour.
22. The Secretary of State's grounds amount to a disagreement with the decision.

Notice of Decision

23. The Secretary of State's challenge fails. The decision of the Immigration Judge will stand.

Deborah Taylor

Signed

Date 6 July 2016

Upper Tribunal Judge Taylor