



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
IA/00893/2013

Appeal Number:

IA/01568/2013

**THE IMMIGRATION ACTS**

**Heard at Field House on  
Determination promulgated on  
1 July 2013**

**Before**

**UPPER TRIBUNAL JUDGE GOLDSTEIN  
DEPUTY UPPER TRIBUNAL JUDGE DIGNEY**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**JIWANJOT KAUR (MRS)  
MANINDER SINGH (MR)**

Respondents

**Representation:**

For the appellant: Ms Pal, Home Office Presenting Officer  
For the respondents: Mr Bellara

**DETERMINATION AND REASONS**

1. On 26 November 2011 the first respondent made an application to remain as a Tier 4 (General) Student Migrant. The second respondent applied as her dependent husband. It is accepted on both sides that the cases stand or fall together. The applications were refused on 10 December 2012 because the first respondent had not provided bank statements demonstrating the necessary amounts of money for the required period. An appeal against the decisions was heard on 11 April 2013 and the appeal was allowed.
2. Permission to appeal was granted. The trial judge concluded that the appellant had not properly applied her flexibility policy as set out in the case of **Rodriguez (Flexibility Policy) [2013] UKUT 00042 (IAC)**. That case is authority for the proposition that the UKBA is under a public law duty to give effect to its policy that applicants will be contacted where mandatory evidence is missing from their applications and they will be given an opportunity to provide this. The judge concluded that the policy had not been applied here, and if it had been the applications would have been successful as the first respondent would have been able to provide bank statements for the required period had she been asked to provide them. The judge allowed the appeal outright.
3. The judge granting permission concluded that it was arguable that the original judge was not entitled to adopt this approach and should have considered remitting the matter to the Secretary of State for her to make a lawful decision. This is in fact the approach that was followed in **Rodriguez**; see the final sentence of the determination. Ms Pal urges us to take this course. Mr Bellara says that it is proper to allow the appeal outright where the position is clear. We do not agree; we are here dealing with questions of fairness and flexibility and it seems to us that such decisions are better made, in the first place, by the Secretary of State.
4. It follows that we are satisfied that the original judge did make an error of law and we remake the decision by allowing the appeal to the extent that the matter remains before the Secretary of State for a lawful decision in accordance with her policy. We would add that there was here an unlawful section 47 decision but that was properly dealt with by the original judge.

### **The appeal is accordingly allowed**

Designated Judge Digney  
Deputy Judge of the Upper Tribunal  
1 July 2013

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