



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

Appeal Numbers: IA/11498/2013
IA/11499/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 30 September 2013**

**Determination
Promulgated
On 1 October 2013**

Before

UPPER TRIBUNAL JUDGE MCKEE

Between

**BINALBEN GAURANGKUMAR RAY
GAURANGKUMAR MANHARBHAI RAY**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: No appearance

For the Respondent: Mr S Walker, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by Mrs Binalben Gaurangkumar Ray, appeal number IA/11498/2013, and her husband Mr Gaurangkumar Manharbai Ray, appeal number IA/11499/2013. They are husband and wife and both hail from Gujarat in India. Mrs Ray is the principal appellant and her husband is her dependant. The couple came to this country in 2009 with visas as a student and her dependant. They obtained further leave to remain in 2011 to expire in 2014 but in August 2012 the sponsoring college which Mrs Ray was attending, that is Allied College, lost its sponsor licence.
2. Subsequently the Border Agency wrote to Mrs Ray on 26 October 2012 informing her that because her sponsoring college had lost its licence her own leave would be curtailed. She would be given 60 days in which to find an alternative sponsor or, if she failed to do so, she would then have to leave the United Kingdom with her husband. Her leave was to be curtailed after 25 December 2012.
3. Before that date Mrs Ray was able to find an alternative sponsor, namely West City College, and this institution issued a Confirmation of Acceptance for Studies on 21 December 2012 whereupon Mrs Ray put in an application to study at that college. Her application was decided on 22 March 2013. The application was refused on the sole basis that Mrs Ray had failed to demonstrate knowledge of the English language at Level B2 of the Common European Framework of Reference for Languages.
4. There are a number of ways in which this competence can be demonstrated. One of them is mentioned in the refusal letter which says: "You have not obtained an academic qualification at least equivalent to a UK Bachelors degree taught in a majority English speaking country."
5. On receipt of the refusal of her application Mrs Ray appealed to the First-tier Tribunal. She and her husband both gave notice of appeal indicating that they wanted their appeals to be determined on the papers. What happened next is perhaps an illustration of the unwisdom of asking for one's appeal to be determined on the papers because when those papers were put before Judge Davies in Manchester sitting on 1 July 2013 he mistakenly thought that the decision letter of 26 October 2012 was the decision against which Mrs Ray and her husband were appealing.
6. Had he read that letter thoroughly he would have seen that it informed the recipients that they had no right of appeal because they still had leave to remain. Judge Davies dismissed the appeals but clearly his misunderstanding as to the decision against which the appellants were appealing completely vitiates his determination. So much was suggested by Judge Parkes when granting permission to appeal to the Upper Tribunal on 12 August this year.

7. The appeal came before me today when the Secretary of State was represented by Mr Steven Walker. The appellants themselves did not attend and indeed I gather from Mr Walker that they are making a voluntary departure from the United Kingdom on 6 October. However their appeals remain in being and therefore it is my task to determine their appeals.
8. Mr Walker is in full agreement with me that the First-tier determination does evince a material error of law and must therefore be set aside and that the Upper Tribunal ought to remake the decision on the appeal. This I now do.
9. The sole reason for refusing the application was the failure by Mrs Ray to meet the language requirement, one of which is set out at paragraph 188(b)(ii)(2) of the Immigration Rules which states that an appellant is deemed to have reached the level required (B2) if she has obtained an academic qualification which meets or exceeds the recognised standard of a Bachelors degree in the UK from an educational establishment in a majority English speaking country. Those countries are then listed and one of them is the United Kingdom.
10. Mrs Ray had in fact adduced a diploma which she had obtained at the College of IT and E-Commerce in April 2011. This was a Level 7 BTech Advanced Professional Diploma in Management Studies. It was on the strength of that diploma that she was awarded a place at West City College.
11. Mr Walker agrees with me that this diploma obtained in the United Kingdom at a level actually in excess of a UK Bachelors degree which is Level 6 fulfils the requirement of paragraph 118 of Appendix A to the Immigration Rules and this being the sole reason why Mrs Ray's application was refused, it follows that her appeal succeeds and so also does the appeal of her husband which is linked with hers. Hopefully the determination of these two appeals will reach the couple before they depart from the United Kingdom.

Signed

Date

Upper Tribunal Judge McKee