



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/14064/2012

THE IMMIGRATION ACTS

Heard at Field House
On 29 August 2013 (On the Papers)

Determination Promulgated
On 5 September 2013

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

MISS JAGDEEP KAUR BEHL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The appellant, a citizen of India born on 20 May 1989 appeals, with permission, against a decision of Judge of the First-tier Tribunal Greasley who in a determination promulgated on 25 October 2012 dismissed the appellant's appeal against a decision of the Secretary of State to refuse her leave to remain as a Tier 4 (General) Student Migrant pursuant to paragraph 245ZX(c) and (d) of the Immigration Rules HC 395 (as amended).
2. The appellant had applied for leave to remain in Britain on 23 September 2011. That application was refused on 22 May on the basis that the CAS provided did not

indicate that the appellant had made “academic progress” from her previous course of study during the last period of leave.

3. In paragraphs 3 onwards of the determination the judge sets out the evidence, the submissions made and his conclusions.
4. Judge Greasley noted that the appellant’s application had not succeeded not only because there was a lack of evidence of “academic progress” but that no points had been awarded for funds as the bank statements predated the application by more than one month.
5. At paragraph 7 of the determination Judge Greasley noted the appellant’s evidence which was that the CAS letter on which the appellant relied had been obtained from St John’s College London when the appellant was given 60 days after the closure of the Academic College of London. At that time she did not have with her the advanced diploma in management studies at Edexcel level 7 as her original documents of her level 7 qualification were with the Home Office. The appellant had claimed that she did not obtain a new CAS letter due to the absence of the level 7 qualifying document so she had been advised by the college to obtain the 60 day extension. As she found it impossible to obtain the level 7 CAS letter without original qualification she had felt helpless. Moreover the appellant had said that it was not her fault if the bank statements failed to meet relevant dates – this had been the fault of the college.
6. The Judge noted, however, that the appellant had accepted that she had received the 60 day extension from the respondent to find an alternative sponsor following the revocation of the licence of the academic college. He found that the appeal could not succeed under the Rules.
7. The grounds of appeal refer to the amount of money which the appellant had spent on her course and that there were mitigating circumstances as to why she had enrolled on the course which she had undertaken and that these factors were relevant to the assessment of her rights under Article 8 of the ECHR. The error of law argued was that the judge had failed to consider the rights of the appellant under Article 8 and that “there is no consideration of Pankina and moreover the guidance set out in CDS (PBS: “available”: Article 8) Brazil [2010] UKUT 00305”.
8. It was emphasised there was an obvious point of fairness that the appellant had difficulty in obtaining a further course of study during the relevant 60 day period.
9. The grounds also argued that the appellant had been misled by her college who had suggested that she could get a new CAS letter on the basis of getting admission at level 5. He stated that there was merit in the ground that the Tribunal had erred in not assessing the human rights element of the claim as there was no assessment.

10. The grounds raised a further point that the Secretary of State had made a decision to remove under Section 47 of the Immigration, Asylum and Nationality Act 2006 which was unlawful.

11. I directed, on 19 December 2012:-

“It is considered that it is appropriate that this appeal should now be determined on the papers.

Unless either party raises any objection to this course of action and gives cogent reasons for requesting an oral hearing, within 28 days hereof, the appeal will therefore be determined on the papers before the Tribunal. Within that time the appellant must serve on the Tribunal and on the respondent any documentary evidence, including witness statements on which she wishes to rely.”

12. There was no response from either the appellant or the respondent. I now proceed to determine the appeal taking into account the papers on the file.

13. I note firstly that there are medical reports from the Relaxation Response Medical Centre stating that the appellant was receiving counselling between 26 June and 26 July 2012. However, I note that the grounds of appeal before the Immigration Judge merely state that the decision is not in accordance with the Immigration Rules or in accordance with the law and that discretion on the Immigration Rules should have been exercised differently. There is no direct reference to the rights of the appellant under Article 8 of the ECHR in the grounds.

14. There was no error of law in the decision of the Judge regarding the refusal of the appellant's claim under the points-based system. It is not, I consider, argued in the grounds of appeal before me that there was an error of law in the judge's consideration of that matter. What is argued is that the Article 8 rights of the appellant had not been properly considered. However the reality is that the grounds of appeal before the Judge did not raise the issue of the Article 8 rights of the appellant and it can hardly be said to be an error of law for him, given that this appellant was a student who would be expected, in any event, to return to her own country, not to have taken into account her Article 8 rights when those had not been argued before him (neither the determination nor the Judge's handwritten note of evidence indicates that the Article 8 rights of the appellant were argued).

15. I have considered the issue of the Article 8 rights of the appellant but the reality is that there is nothing on which I could base a conclusion that the decision was in breach of the appellant's Article 8 rights. There is nothing to indicate that the appellant was pursuing a coherent course of study which had clear objectives and which was thwarted by the decision - there is no statement from the appellant to indicate that that is the case. I do not consider therefore that should the Immigration Judge have considered the issue of the rights of the appellant under Article 8 in an appropriate structured way he could have reached a conclusion whereby the Article

8 rights of the appellant were engaged or if they were engaged her removal would be disproportionate.

16. I have however considered the issue of the removal directions made under Section 47 in the refusal of the application for an extension of stay. Those removal directions were unlawful and following the judgment of the Court of Appeal in **Ahmadi [2013] EWCA Civ 517** I find that the decision to make the removal direction under Section 47 was not in accordance with the law and I allow the appeal in that regard.
17. I therefore find that the determination of the First-tier Judge dismissing the appellant's appeal on immigration and human rights grounds shall stand but I allow the appeal against the decision to make removal directions under Section 47 of the 2007 Act.

Signed

Date

Upper Tribunal Judge McGeachy