



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/07816/2014

THE IMMIGRATION ACTS

Heard at Glasgow
On 9th September 2014

Determination Promulgated
On 16th September 2014

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

And

PEACE AMARACHI OZURUMBA

Appellant

Respondent

Representation:

For the Appellant: Ms S Saddiq, Senior Home Office Presenting Officer
For the Respondent: Mr A Hussein, Legal and Legal solicitors and Notaries

DETERMINATION AND REASONS

1. Permission to appeal against the decision of the First-tier Tribunal promulgated on 9th May 2014 was granted on the grounds that it was arguable that the claimant did not provide the required documents with her application to vary her leave to remain as a Tier 4 student and was thus unable to satisfy the relevant rule applicable to her at the time. Further permission to appeal was granted on the grounds that it was arguable that although the First-tier Tribunal judge had referred to the “evidential flexibility policy” he had failed to identify which relevant provision applied.

Background

2. The claimant sought to vary her leave to remain as a Tier 4 student. The application was refused on 22nd January 2014 and a decision was also made to remove her from the UK in accordance with s47 Immigration Asylum and Nationality Act 2006.
3. The application was rejected on the basis that because her previous leave to remain was as a Tier 1 Post Study Migrant and not as a Tier 4 migrant student she could not claim to have an established presence and thus she was required to show funds to cover the fees for the first academic year and £800 per month for 9 months for herself. On the basis of documentation produced with her application the SSHD found that the claimant was unable to show that she held the required funds.
4. In her grounds of appeal the claimant asserted that there were sufficient funds as evidenced by a letter from Future View Financial Services Ltd dated 18/12/2013 and that a further letter from this organisation dated 30th January 2014 clarified that the funds had been in the account since 2009. She submitted that the financial information forwarded to the Secretary of State clearly showed sufficient funds. She further asserted that the SSHD should have applied paragraph 245AA and requested the letter said to be attached to the letter dated 18th December 2013, which had been omitted in error from her application.

Error of law

5. The judge correctly identified that the appeal turned on the narrow issue of whether the claimant had sufficient funds to meet the maintenance requirements. In [11] and [12] the judge states that

“It is clear that at the time of the application the Appellant could not meet the requirements. The funds in the account for First Bank operated by the Appellant’s father did not satisfy the requirements over the requisite period and there appears to have been a document missing in relation to the accounts held by Future View.....In this particular case it is clear from the letter from Future View dated 18th December 2013 that the funds in Future View are held on a long term basis. That letter refers to an attached document. The attached document was not submitted. It was open to the Home Office in the circumstances, and given that the funds would have been sufficient, to call for the attached document, the Home Office did not do so and accordingly and in view of the fact that there is no doubt that the requisite funds have been held for the requisite period I am allowing the appeal.”

6. The letter from Future View dated 18th December does not state that the funds are held on a long term basis but rather states

“This is to confirm that the above named client operates a Fixed Income (Money Market Indexed Portfolio) account with us which as at the date of this letter is valued at N4,212,763.26k....”

The judge therefore erred in law as to his interpretation of that letter.

7. The “missing document” was a letter purportedly attached to the letter dated 18th December 2013 from Future View Financial Services Ltd. The letter dated 18th December 2013 goes on to state

“.....We hereby confirm that the attached document is authentic and the information contained therein accurate.”

The letter attached which the First-tier Tribunal judge states should have been sought, in accordance with the flexibility policy, is dated December 19 2013 and provides information that N4,212,763.26 was held on a valued date of 22 November 2013 with maturity on 20 December 2013 at an interest rate of 12% per annum. That letter did not exist on 18th December 2013. There is no letter or document dated 18th December other than the letter referring to an attached document.

8. Mr Hussein submitted that it was clear from a handwritten note that the letter of 18th December had been collected on 19th December and that the explanation for the different dates was a banking error. He could not explain why the appellant had not sent that letter in with her application given that her evidence was that both the letter of 18th December and 19th December had been collected at the same time.
9. Ms Saddiq submitted that the letter of 19th December did not exist on 18th December and thus could not be authenticated; that there was no obligation on the part of the Secretary of State under paragraph 245AA to request the attachment because there was nothing in the letter of 18th December which indicated that it would assist the appellant and in any event the letter of 19th December did not show the requisite funds because it was referring to funds held for a period prior to the date of application. She further submitted that the First-tier Tribunal judge had erred in law in failing to identify which section of paragraph 245AA she was referring to when finding that the Secretary of State should have sought the attachment.
10. The two questions that need to be asked are should the Secretary of State have sought the missing attachment and if so can the letter of 19th December be that missing document. Although the Secretary of State submits that the judge erred in law in failing to identify the relevant section of paragraph 245AA in her determination if it were apparent that the document should and could have been requested in accordance with the rules then a failure to specify the section would not be fatal. But in this case this appellant had submitted a document that set out that her father held the requisite funds for her support on that date. It is not however apparent that the document that is referred to as being authenticated has anything to do with the funds. It is not apparent that the missing documents could provide evidence of funds or that it may include evidence that the funds had been held for the requisite period. Thus the failure of the Secretary of State to request the document was not contrary to paragraph 245AA and the judge erred in law in so finding.
11. Even if that is incorrect and the Secretary of State should have requested the missing document, the letter dated 19th December could not have been that

document. It is not possible for a letter dated 18th December 2013 to authenticate a document dated a day later. Even though the letter of 18th December was not collected until 19th December, it had been prepared on 18th December and in the absence of any explanation from Future View how it could authenticate a document that had not been prepared there was inadequate evidence before the SSHD that the appellant had the requisite funds.

12. I am therefore satisfied that the First-tier Tribunal judge erred in law in finding firstly that the SSHD should have requested a missing document that, on the face of documents already before her, would not have assisted her in assessing the availability of funds, and secondly that even if that missing document had been requested no such document has been produced that shows that the claimant had the requisite funds.

13. I set aside the decision to be remade.

Remaking of the decision.

14. The appellant failed to produce evidence that she had adequate funds for the requisite period of time. The letter dated 19th December 2013, although showing that the appellant had adequate funds was not produced with her application. It was not a document that was attached to the letter of 18th December 2013.

15. The Secretary of State was under no obligation in accordance with paragraph 245AA of the Immigration Rules to request a document referred to in the letter of 18th December, which did not, on its face have any bearing on the period of time her father had held the funds.

16. Letters produced subsequent to the decision for the purposes of the appeal appear to indicate that the appellant did have access to the required funds, as does the letter of 19th December but none of these letters was produced with her application. That evidence does not meet the requirements of the Rules and is thus not relevant in this appeal.

17. I find that the appellant has not discharged the burden of proof that she meets the requirements of the Immigration Rules. I dismiss her appeal against the decision of the respondent dated 22nd January 2014.

18. In so far as the decision to remove her pursuant to s47 is concerned the appellant did not seek to appeal that decision in her grounds of appeal to the First-tier Tribunal. It does not appear that she sought to amend her grounds of appeal to the First-tier Tribunal and has not sought to do so before me. The decision to remove her dated 22nd January 2014 therefore stands.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

I re-make the decision in the appeal by dismissing it

Date 9th September 2014

Upper Tribunal Judge Coker