



IAC-FH-CK-V1

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

Appeal Numbers: IA/19199/2014  
IA/19205/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 30 October 2014**

**Decision & Reasons Promulgated  
On 10 November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MRS KULWINDER KAUR  
MR SUMEET SINGH  
(ANONYMITY DIRECTIONS NOT MADE)**

Respondents

**Representation:**

For the Appellant: Mr T Wilding, Home Office Presenting Officer  
For the Respondents: Mr J Trussler, Counsel

**DETERMINATION AND REASONS**

1. The respondents are both citizens of India and are married to each other. Mrs Kaur's date of birth is 1 September 1988 and Mr Singh's date of birth is 12 September 1987. I

shall refer to the respondents as appellants as they were before the First-tier Tribunal. I shall refer to Mrs Kaur as the appellant.

2. The appellant made an application on 20 March 2014 for leave to remain as a Tier 4 Student Migrant and her husband made an application to remain as her dependant. The appellant and her husband had been granted leave to enter the UK on 23 March 2012 (the appellant as a Tier 4 (General) Student Migrant and her husband as a dependant). Their leave expired on 30 March 2014.
3. The application was refused by the Secretary of State in a decision of 10 April 2014 on maintenance grounds. It was noted by the Secretary of State that the appellant needed to establish that she had £3,200 for a consecutive 28 day period. The decision-maker was satisfied that there was £1,200 available to Mr Singh and that the appellant needed to show that she had a further £2,000 available to her. The bank statements that had been submitted by the appellant showed that she fell short of the funds throughout the relevant period.
4. The appellant appealed and the appeal was allowed by Judge of the First-tier Tribunal Bircher in a determination that was promulgated on 14 July 2013. The decision was determined on the papers at the request of the appellant.
5. The Judge allowed the appeal having taken into consideration bank statements provided by the appellant that he described as having been “subsequently” provided and that these statements established that the appellant met the maintenance requirements of the Rules. Permission to appeal was granted by First-tier Tribunal Judge Colyer on 4 August 2014.
6. The grounds seeking permission to appeal assert that the evidence relied upon by the Judge was not admissible pursuant to Section 85A of the Nationality, Immigration and Asylum Act 2002. The bank statements relied on by the Judge had been submitted post- date of the application.
7. Mr Trussler indicated to me that he had been instructed late in the day and that there was a problem which he and Mr Wilding could not resolve namely whether the statement relied upon by the Judge described as having been provided “subsequently” was produced post the date of the application date but pre the date of the decision or post the date of the decision. There was a discussion at the hearing and it was agreed by the parties that the document that the Judge relied on was a bank statement ending in the digits 2968 which was on the court file and which was printed out on 16 April 2014, which was after the date of the decision. In these circumstances Mr Trussler conceded that he was in some difficulty as it was obvious that the bank statement on which the Judge relied was submitted post the date of the decision.
8. The Judge in my view materially erred in law in admitting the bank statement and allowing the appeal on the basis of this post-application evidence. I set aside the

decision under the Immigration Rules pursuant to Section 12(2)(a) of the 2007 Act. It is clear that on the evidence that was submitted with the application the appellant was unable to satisfy the maintenance requirements of the Immigration Rules.

9. Mr Trussler asked for an adjournment in order to prepare for a further hearing because he had been instructed late in the day. I refused the application having considered the overriding objective in Rule 2 of the Procedure (Upper Tribunal) Rules 2008 and in the light of the directions that had been issued to the parties confirming that should there be an error of law that was such that the decision will be set aside the Upper Tribunal would go on to remake the decision at the hearing on 30 October.
10. I remake the decision and dismiss the appeal under the Rules pursuant to Section 12(2)(b)(ii).
11. Article 8 of the 1950 Convention on Human Rights was not raised by the appellant in the grounds of appeal before the First-tier Tribunal. Indeed, there was no witness statement from the appellant or her husband before the First-tier Tribunal and there had been no service of evidence in accordance with the directions of the Upper Tribunal. It is clear that the appellant was granted leave on 23 February 2012 in order to study in the UK and that leave expired on 30 March 2014. There is insufficient evidence to establish that the appellant and her husband have in the UK any private life that would engage the Convention, and in these circumstances I dismiss the appeal under Article 8. There was no ground of appeal before the First-tier Tribunal relating to paragraph 245AA of the Rules and this was not an issue raised by Mr Trussler. In any event, on the basis of the evidence before me, it is clear that it does not apply in this case which does not involve missing documents in a sequence.
12. The appeal is dismissed under the Rules and Article 8.

Signed

Joanna McWilliam

Date 9 November 2014

Deputy Upper Tribunal Judge McWilliam