



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

Appeal Number: IA/31657/2013

THE IMMIGRATION ACTS

Heard at Bradford

On 10th April 2014

Determination

Promulgated

On 15th May 2014

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ADETAYO OLANREWaju IHEANACHOR

Respondent

Representation:

For the Appellant: Mr M Diwncyz

For the Respondent: Mr A Williams

DETERMINATION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Henderson made following a hearing at Bradford on 8th January 2014.

2. The claimant is a citizen of Nigeria born on 7th September 1972. She applied for leave to remain as a Tier 4 (General) Student Migrant but was refused on 5th March 2013.
3. The grounds were that, as she had previously been granted leave to remain in order to study for an NVQ in the health and social care programme at Onto Limited, which was 26 months in duration, and she was now applying for leave to remain in order to study for a course below degree level which was 24 months in duration, a further grant of leave would exceed a period of three years of combined study below degree level.
4. The judge found that whilst the claimant was making progress in her studies and that the current course represented an academic progression from her previous studies the fact was that NVQ level 5 was not classified as at degree level. Consequently she did not meet the requirements of the Immigration Rules.
5. She did however allow the appeal on Article 8 grounds. The claimant had come to the UK and paid substantial sums for the payment of fees and maintenance. She was following the advice of her highly trusted Sponsor in making the latest application and she was making satisfactory progress. The judge relied on the decision in CDS (PBS available Article 8) Brazil [2010] UKUT 305 and considered that, since there had been no alteration in her ambition to obtain a higher qualification and was now on a course which represented a step into management training at degree level, it would be disproportionate for her to be removed for the period of ten months required to complete the course.

The Grounds of Application

6. The Secretary of State sought permission to appeal on the grounds that the judge misdirected herself in allowing the appeal on Article 8 grounds. The Secretary of State relies on the case of MF Nigeria [2013] EWCA Civ 1192. The Immigration Rules are a complete code and it will only be in very compelling circumstances that the Rules would not provide a proportionate result. The claimant's private life in its essential form can continue outside of the UK.

Submissions

7. Mr Diwncyz relied on his grounds.
8. Mr Williams submitted that the judge had provided adequate reasoning and had referred to the relevant case law. She considered the public interest in maintaining immigration control and properly applied the reported case giving proper reasons for her decision. There is no legitimate aim in sending her home. The claimant has been in the UK for some seven years and has invested a great deal of money in her course which will only take a further nine months to complete. It was not her fault

that her course provider was unaware of the fact that the course does not meet the requirement of the Rules. She stands to lose everything if her appeal is not allowed and it would be extremely harsh to expect her to leave, given that she came to the UK to do a degree and simply wishes to complete her course.

Findings and Conclusions

9. The problem for the claimant is that her case is indistinguishable from very many other students who, whilst not to blame personally, simply do not meet the requirement of the Rules.
10. It is difficult to see what the compelling circumstances are which require a finding that the UK would be in breach of its international obligations upon the claimant's removal. She came to the UK in order to study and, contrary to the submissions of Mr Williams, does not stand to lose everything by this decision since she has already obtained a number of different qualifications. She only ever had the expectation of being here for a temporary purpose and if she does not meet the requirements of the Immigration Rules, absent compelling circumstances, she should expect to have to leave the UK.
11. Article 8 does not protect a right to education as such. No other grounds were put forward to the judge as the basis for a finding in that her private life rights would be breached by removal. The claimant is a citizen of Nigeria and can continue her studies there. Any relationships which she has established in the UK can be maintained.
12. There are no good grounds for granting leave to remain outside the Rules and accordingly the judge erred in law in deciding otherwise.

Decision

13. The original judge erred in law. The decision is set aside and is remade as follows. The claimant's appeal is dismissed.

Signed

Date

Upper Tribunal Judge Taylor