



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/33560/2013

THE IMMIGRATION ACTS

Heard at Field House
On 21 August 2014

Determination Promulgated
On 5 September 2014

Before

DESIGNATED JUDGE MURRAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

GANGA KARAKHETI
(Anonymity not directed)

Respondent

Representation:

For the Appellant: Ms A Holmes, Home Office Presenting Officer
For the Respondent: Mr Gary Dillon, a friend of the Respondent

DETERMINATION AND REASONS

1. The Appellant in these proceedings is the Secretary of State. However, for convenience I shall now refer to the parties as they were before the First Tier Tribunal.
2. The Appellant is a Citizen of Nepal born on 14 March 1984. She applied for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant. Her application was refused by the Respondent on 22 July 2013. Her appeal was heard by Judge of the First Tier Tribunal Boyd on 13 May 2014. He allowed the appeal under the Immigration Rules in a Determination promulgated on 23 May 2014.
3. An application for permission to appeal was made by the Respondent on 13 June 2014. The grounds of application state that the Judge erred in his approach to Section

85A of the Nationality, Immigration & Asylum Act 2002 as he admitted evidence he ought to have excluded. The Judge found that by the date of the Hearing the Appellant had submitted the correct financial evidence but that evidence was not submitted with her application and that is necessary according to the Rules. The permission states that the Judge may have erred in allowing the appeal by relying on evidence that ought not to have been included.

The Hearing

4. Mr Dillon is a friend of the Appellant who appeared at the First Tier Hearing and made submissions to the Judge.
5. The Presenting Officer made her submissions submitting that she is relying on the grounds of application and the permission. She submitted that the Judge relied on information which should not have been relied on and Section 85A prohibits the Judge from doing this.
6. I was referred to paragraph 9 of the Determination which states "I am satisfied from all the bank accounts now produced, that the Appellant has in excess of the required £1,600 for a consecutive period of 28 days falling within the 31 days prior to the date of the application and indeed she had the required funds in her account from 3 April 2013 right up until the date of the application on 28 June 2013, a period of 87 days".
7. I was asked to find that there is a material error of law in the Judge`s Determination.
8. I asked Mr Dillon if all the bank statements were submitted with the application. He referred me to a letter which is on file which states that the Appellant originally went to a person who was falsely passing himself off as a solicitor and legal immigration advisor. He said that this was confirmed by the Solicitors Regulations Authority. A cash payment was made to that person and although he submitted the relevant application form he did not complete it properly and he sent no evidence with it.
9. I asked him if the relevant bank statements were put in with the application form. Mr Dillon said they were not. He said the bank statement originally submitted was 3 days out. The original bank statement was from 25 May 2014 until 21 June 2014. He submitted that the matter was dealt with on 28 June 2014 and the bank statement was 3 days short of the required term. I asked him when the correct bank statement was submitted and he said that was in April 2014.
10. Mr Dillon informed me that he had had many conversations with a Ms Mercer of the Home Office who told him to put all the documents in as soon as possible and when the first Hearing went ahead, Mr Liddle, the Presenting Officer, assured him that everything would be alright and Judge Boyd allowed the appeal.
11. It is clear that Mr Dillon and the Appellant were misled. The permission in this case was granted because of a technicality, under Section 85A of the Nationality, Immigration & Asylum Act 2001. Judge Boyd should not have accepted the evidence

which was produced after the date of application. There is therefore an error of law in his Determination. Section 85A(4) states that where exception 2 applies the Tribunal may consider evidence produced by the Appellant only if it (a) was submitted in support of and at the time of making the application to which the immigration decision related. That is not the case here.

12. The First Tier Judge relied on evidence which should not have been relied on because it was not submitted with the application and there is therefore an error of law in his Determination.

Decision

13. I find that there is a material error of law in the Judge`s Determination under the Immigration Rules.
14. I set aside the First-tier Tribunal`s decision.
15. The claim under the Immigration Rules is dismissed.
16. No Anonymity direction has been made

Signed

Date

Designated Judge Murray
Judge of the Upper Tribunal