



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

Appeal Number: IA/46450/2013

THE IMMIGRATION ACTS

Heard at Field House

**(By Video Link to Bradford Hearing
Centre)
On 30 May 2014**

**Determination
Promulgated**

On 4 June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVID TAYLOR

Between

**ONE ONALENNA CHAPPY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Williams, Solicitor

For the Respondent: Miss C Johnston, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a 26 year old citizen of Botswana, appeals against the determination of the First-tier Tribunal (Judge Grimshaw) promulgated on 19 February 2014 which held that the appellant had no right of appeal

against the respondent's earlier decision and that there was no valid appeal before the Tribunal.

2. The background to the present application is that the appellant had leave to remain in the UK as a student from 26 September 2005 until 12 October 2012 (barring about a two months gap which is not relevant to this decision). She had previously implied on 26 October 2012, after her leave to remain had expired, for leave to remain because she was seeking to secure a place to undertake a Masters Degree at Leeds Trinity University on a course which was due to commence on 1 January 2013. That application was refused on 15 March 2013 – there is a dispute as to when that decision was actually received by the appellant – and that application was refused as being outside the requirements of the Rules: the appellant did not meet the requirements of paragraph 245ZX(l) because the course did not commence within the expiry of the appellant's current leave or (as in this case) where the applicant had overstayed, within 28 days of when the period of overstaying began. Nor did the appellant meet the Article 8 provisions of paragraph 276ADE of the Rules. There was no right of appeal.
3. On 22 April 2013 the appellant made a new application for permission to remain as a student. It appears that she had already commenced the course at Leeds Trinity University on 1 January 2013 and the course was due to end on 30 November 2013. I do not know whether she in fact completed that course. On 23 September 2013 the respondent refused the application with no right of appeal. The application was refused by reference to paragraph 245ZX(m) of the Immigration Rules which provides that the applicant must not be in the UK in breach of immigration laws "except that any period of overstaying for a period of 28 days or less will be disregarded". The respondent maintains that the appellant had overstayed for more than 28 days.
4. The First-tier Tribunal refused permission to appeal to the Upper Tribunal. In refusing permission the judge said this:

"Section 82(2)(d) of the 2002 Act only gives a right of appeal against a decision to refuse or extend an applicant's leave 'if the result of the refusal is that the person has no leave to enter or remain'. In other words, it is only if an application is made during the currency of existing leave that a refusal to vary or extend will be appealable – save the indulgence provided by the 28 day period above, which the appellant could not benefit from."
5. Permission was later granted by the Upper Tribunal. It was considered arguable that if a grace period of 28 days is allowed in the circumstances set out above then an application made within that period cannot be treated as being out of time with no right of appeal.
6. On 10 May 2014 the respondent filed a notice under Rule 24 arguing that the Judge of the First-tier Tribunal directed himself appropriately and that

there was no material error of law in his determination. For the reasons below, I have come to the same conclusion.

7. Although the appellant claims that the first refusal dated 15 March 2013 was not served on her until 26 March 2013 she has not produced any evidence, such as the franked envelope containing the decision, that she received the decision eleven days after its date. The letter is deemed to have been received by 17 March unless there is evidence to the contrary and the appellant has not produced any such evidence. Accordingly, her application of 22 April 2013 was more than 28 days after deemed receipt of the earlier refusal decision. She cannot therefore meet the requirements of paragraphs 245ZX(l) or (m) of the Rules. Thus, the First-tier Tribunal Judge's findings at paragraphs 19 to 25 contain no material error of law.
8. The grounds make no reference at all to Article 8 and accordingly it is not necessary for me to consider any aspect of Article 8.

Decision

There was no error of law in the decision of the First-tier Tribunal and that decision shall stand. The appellant had and has no right of appeal.

Deputy Upper Tribunal Judge David Taylor
3 June 2014