



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/49151/2013

THE IMMIGRATION ACTS

Heard at Field House
On 23rd June 2014

Determination Promulgated
On 1st July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

Miss Meng Yao Zhao
(Anonymity Direction Not Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None
For the Respondent: Ms A Everett, Home Office Presenting Officer.

DETERMINATION AND REASONS

1. I shall refer to the parties as they were referred to in the First Tier Tribunal that is Ms Zhao as the appellant and the Secretary of State as the respondent although the application for permission to appeal was made by the respondent.

2. The appellant is a citizen of China and born on 28th June 1989. She made an application on 25th September 2013 to remain as a Tier 4 (General) Student Migrant but the application was refused on 11th November 2013 under paragraph 245(d) of the Immigration Rules. She could not meet the maintenance requirements under Appendix C of the Immigration Rules. She was required to show that she was in possession of £5,425 for a 28 day period prior to the application. The bank statements presented only showed funds between 6th September 2013 and 25th September 2013 and did not cover the required consecutive 28 day period.
3. First-tier Tribunal Judge Dennis allowed the appellant's appeal on 1st April 2014 because the appellant had shown that she had ample funds and the respondent should have considered her Flexibility Policy.
4. An application for permission to appeal was made on the basis that the Judge had misdirected himself because the bank statements subsequently produced were not admissible by reason of Section 85A of the Nationality Immigration and Asylum Act 2002. In other words the Tribunal may consider evidence submitted only if it was submitted in support of and at the time of making the application to which the immigration decision related.
5. Ms Everett submitted at the hearing before me that the appellant could not comply with the Immigration Rules as she did not have the required funds for the relevant period. There were no 'missing documents'. It was not incumbent upon the respondent to search out further documentation.

Conclusions

6. I am satisfied that the appellant was served with notice of the date time and venue of the hearing before me but she failed to attend.
7. The Immigration Rules specify that the appellant must demonstrate that funds are available for the 28 day period prior to the date of the application (Appendix C). The end date of the closing balance must be dated ***no earlier than 31 days before*** the date of the application Appendix C 1A (h).
8. I find that the judge misdirected himself and made an error of law in his determination. At paragraph 7 he stated

*'I am thoroughly satisfied she has very substantially in excess of that [£5425] throughout the period covered by the bank account and certainly over the twenty-eight day period **prior to the decision**. Given the fact the Appellant's balance was very high from 10th September and noting that she had already paid the substantial tuition in advance I am satisfied that this would have been an appropriate circumstance for the Respondent to have exercised that 'evidential flexibility' available and to have sought clarification on this point'.*
9. The relevant date is the date of the application not the date of decision. The bank accounts presented to the Tribunal, and on file, dated from 6th September 2013 to 8th October 2013 and showed that the appellant only had £1,588.78 in the account

between 6th September and 9th September 2013. The appellant had to show she held the funds for a 28 day period up to the date of the application (or at least held funds for a 28 day period which ended not more than 31 days prior to the application) and she could not do so on the bank statements provided from Barclays Bank. First she did not hold the required *amount* for the period days she evidenced prior to the application and secondly did not show that she held the funds for the *required period*. There was no indication that the appellant held a second account and no reason for the Secretary of State to suppose that she held any other funds and thus call for further evidence.

10. **SSHD v Rodriguez** [2014] EWCA Civ 2 confirmed the proposition that ‘there is no unfairness in the requirement in the PBS that an applicant must submit with his application all of the evidence necessary to demonstrate compliance with the rule under which he seeks leave’. The appellant did not at the date of her application demonstrate that she could comply with the Rules and nor did she demonstrate that after the decision.
11. There was a reference to additional grounds that the appellant’s long term goal was to be a piano teacher and she needed to show that she had a master’s degree. I am not persuaded that this was effectively an appeal further to Article 8 but even if it were, this does not engage any form of protected Article 8 right. **Nasim and others (Article 8)** [2014] UKUT 00025 (IAC) confirmed that the use of Article 8 was limited where the case is far removed from the engagement of a claim relating to physical or moral integrity. That is the case here.
12. I therefore find that there was an error of law, remake the decision and for the reasons above dismiss the appeal on all grounds.

Signed

Date 23rd June 2014

Deputy Upper Tribunal Judge Rimington