Upper Tribunal
(Immigration and Asylum Chamber) APPEAL NO: IA/04515/2014

THE IMMIGRATION ACTS

Heard at Field House
On 21 January 2015

Determination promulgated
On 4 February 2015

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL DIGNEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

CLEOPETRA NATASHIA FYNN RONDGANGER

Respondent

Representation:
For the appellant: Ms Everett, Home Office Presenting Officer
For the respondent: Ms Uko

DECISION AND REASONS

1. On 28 November 2011 the respondent, a citizen of South Africa, applied to remain as a Tier 1 (Post-Study Worker) Migrant and that application was refused on 19 December 2013. An appeal against the decision was heard on 25 September 2014 and the appeal was allowed. Permission to appeal was sought.

2. It was argued that the judge failed to address and make findings on the Secretary of State's[1] assertion that the applicant had failed to provide with her application the original of her transcripts of performance from the institution at which she had studied and also of her Lloyd's TSB bank statement. The trial judge accepted that the appellant had provided the required original documentation; see paragraph 18 of the determination.

3. It was secondly argued that the respondent could not show that at the relevant time she was in the United Kingdom as a student/Tier 4 Migrant/ dependant of an appropriate person.[2] The first matter to point out is that Ms Uko argued that this was not part of the original grounds for refusal and cannot now be relied on. It clearly is; see pages 2 and 3 of the letter of 19 December 2103. The trial judge concluded that the respondent did have extant student leave at the time of the application.

4. With regard to the ground set out in paragraph 2, above, the judge granting leave concluded that the judge made findings that were properly explained and that were open to him on the evidence and that the respondent had provided the originals of the required documents and he concluded that there was no merit in that ground. He nonetheless granted permission on this point for reasons I do not follow as the two grounds are in no way related. I agree with him that there is no merit in this ground. The trial judge made findings on this point that were open to him on the evidence and the contrary was not argued at the hearing.

5. With regard to the respondent's status at the relevant time, the judge granting permission said:

> Given the [applicant's] acceptance that [her] last leave to remain was outside of the Immigration Rules then the judge's findings at para 18 of his decision that [she] had "an extant student visa" at the time of [her] application is perverse and constitutes a material error of law.

6. That analysis appears to be correct. The determination points out that the respondent's earlier application to remain as a student was allowed on article 8 grounds. That would result in the respondent only being granted discretionary leave. There is nothing in the determination to suggest that the respondent had status as a student, save the respondent's assertion in paragraph 14 of the determination, a matter for which there was no evidence.

7. I asked Ms Uko if there had been evidence at the original hearing that the respondent had the necessary status. She said that she could not answer that question; I take that to mean that she could not point to such evidence.

[1] Hereafter I shall call the Secretary of State "the appellant" and the applicant "the respondent".
[2] It is not in dispute

8. It is clear that there was no evidence before the trial judge that the respondent had the necessary status at the relevant time; indeed the evidence points to the contrary. It follows that the determination contains an error of law as the only conclusion that could be reached on the evidence was that the respondent did not have the relevant status and the appeal should therefore have been dismissed.

9. It is not necessary to say more, but Ms Everett has provided copies of documents that show that that this is in fact the correct conclusion, not simply on the evidence provided, but in reality. There is a determination dated 28 February 2011 that allows the respondent's appeal on article 8 (Private Life) grounds only. There is then a grant of discretionary leave dated 24 May 2011 that obviously followed that determination. It follows that at the time of the application the respondent did not have leave as a student and that her application could not succeed.

10. Ms Everett points out that there is now, but was not at the time of the decision, a policy that might have assisted the respondent. This cannot affect the outcome of this appeal but it is a matter that the respondent's representatives may like to consider.

11. It follows that the original determination did contain an error of law and I substitute a decision dismissing the appeal.

The appeal is accordingly allowed

Designated Judge Digney
Judge of the Upper Tribunal 23 January 2015