



IAC-FH-CK-V1

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

Appeal Numbers: IA/11276/2014
IA/11278/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 23rd September 2015**

**Decision & Reasons Promulgated
On 13th October 2015**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**GURPAL RAJVINDER KAUR
GURPREET SINGH SAINI
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: In Person

For the Respondent: Mr M Diwncyz, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellants' appeal against the decision of Judge Shimmin made following a consideration of the papers at Bradford on 14th May 2014.

Background

2. The first appellant was granted leave to enter the UK as a Tier 4 (General) Student on 19th May 2011 until 25th September 2013. She was granted further leave on 17th August 2012 until 7th October 2013.
3. She subsequently made a combined application for leave to remain in the UK as a Tier 4 (General) Student Migrant under the points-based system and for a biometric residence permit. The respondent refused the application on the grounds that she did not have adequate maintenance. She was required to show that she was in possession of £11,250 for a consecutive 28 day period as required by paragraph 1A of Appendix C of the Immigration Rules but her bank statements showed that she and her dependant had only £2,923.08.
4. The Secretary of State recognised that the appellant claimed that she only had to show a lower amount of money for her maintenance funds as she had an “established presence studying in the UK” as defined under paragraph 14 of Appendix C of the Rules. However, Appendix C required that an applicant had current entry clearance, leave to enter or leave to remain as a Tier 4 Migrant as at the date of application.
5. In the appellant’s case her leave ran to 7th October 2013. She had, according to the Secretary of State, made her application on 8th October 2013 and therefore no longer had valid leave to remain in the UK and did not have an established presence. Moreover, she had no right of appeal against the decision because she did not have leave to remain at the time of the application.

The Judge’s Determination

6. The judge set out the background to the appeal and noted that the duty judge had made the following direction:

“It is argued by the respondent that the appellant does not have a right of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 because he/she did not apply for leave to remain until the expiry of his/her existing leave. This is because a prior application made during the currency of that leave was not accompanied by the correct fee. Following the decision in Basnet (validity of application - respondent) [2012] UKUT 00113 (IAC) the onus of proof is on the respondent to show that the correct fee was not paid. It is therefore directed that the appeal be listed for a substantive hearing; that at that substantive hearing the issue of validity be decided; and that at least fourteen days prior to the substantive hearing the respondent lodge with the Tribunal and serve upon the appellant any information showing that the correct fee was not paid.”
7. The judge noted that there was no documentation from the respondent showing that the correct fee was not paid and furthermore in the grounds of appeal the appellant argued that the applications were lodged online before the expiry of the existing leave.
8. He then wrote as follows:

“In the absence of evidence to the contrary I am satisfied that the applications were lodged before the expiry of the existing leave and that the appeals are valid.”

9. The judge said that the grounds of appeal were generic and there was no evidence before him upon which the decisions of the respondent could be overturned. On that basis he dismissed the appeal.

The Grounds of Application

10. The appellant sought permission to appeal on the grounds that the judge had not acted fairly and relied upon the case of Patel (revocation of sponsor licence - fairness) [2011] UKUT 211. She argued that, as the judge had found that she had made an in time application, he should have found that she had sufficient maintenance in her account which met the requirements of Appendix C since she had an established presence in the UK.
11. Permission to appeal was initially refused by Designated Judge Garratt but subsequently granted by Judge King on 21st August 2014. Judge King noted that there was an email from UKBA dated 3rd October 2013 which seemed to indicate that the application was completed online by that date.

The Hearing

12. There is no cross-appeal by the respondent challenging the decision of the judge that the applications were lodged before the expiry of the existing leave. At the hearing Mr Diwnycz frankly accepted that the Secretary of State was wrong and produced evidence on the Home Office file that payment had been charged on 3rd October 2013.
13. The judge ought to have engaged with the consequence of that decision, namely whether the appellant should have been treated as having an established presence in the UK and therefore subject to the reduced maintenance requirements.
14. Both parties agreed that the judge had erred in law and that the appeal ought to be allowed to the extent that the respondent should now reconsider the application on the basis that it had been made in time.

Notice of Decision

The original judge erred in law. His decision is set aside and remade as follows. The appeal is allowed and remitted to the Secretary of State for her to make a decision on the application made.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Taylor