



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/08941/2013

THE IMMIGRATION ACTS

No hearing  
6<sup>th</sup> August 2013

Determination Promulgated  
16<sup>th</sup> August 2013

Before

Mr C M G Ockelton, Vice President

Between

PRATIK SHIMPI

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. Following the grant of permission to appeal in this case I reviewed the file and wrote to the parties as follows:

“The appellant points out that the decision, to dismiss the appeal against the variation decision, appears to be at odds with his reasoning in paragraphs 6-11, which could only lead to allowing the appeal.

I propose to deal with this appeal without a hearing, to identify the circumstances set out above as constituting an error of law, to set aside Judge Heynes’ decision and to substitute a determination allowing the appellant’s appeal for the reasons given in Judge Heynes’ paragraphs 6-11.

Any proposal to the contrary must be made within **14 days** of the date of this letter”.

2. No response has been received.
3. Paragraphs 6 – 11 of Judge Heynes’ decision are as follows:
  - “6. Appendix C of the Immigration Rules does not require a Tier 4 applicant to provide proof of relationship to a parent whose bank statements have been submitted to satisfy the maintenance requirement.
  7. The application form is not clear on the point. M15 asks if the maintenance funds in the name of the applicant of the parent or guardian. The Appellant ticked the box confirming the latter and was instructed to go to M16. That asks him to confirm that he is providing a letter from his parent which he ticked. An applicant is not then directed to another box. M17 simply says “I am also providing one of the following:” which includes a birth certificate naming himself and his parents. It does not specifically cite this as a requirement.
  8. The Appellant had, in fact, provided a copy of his passport which shows Lankanath Dalaptrao Shimpi as his father.
  9. With his grounds of appeal, the Appellant provided his birth certificate showing Lankanath Shimpi to be his father. No issue has been raised as to the reliability of this document and I find that they are related as claimed.
  10. Given that the application form does not state that the submission of a birth certificate is an essential requirement, Appendix C does not require it and the Respondent had a reliable document, the Appellant’s passport, showing the name of his father, the submission of a birth certificate, which would have provided no more reliable information than the Respondent actually had, could have been dealt with under the Evidential Flexibility Policy.
  11. I am not persuaded that the failure to have provided a birth certificate constituted a breach of paragraph 245ZX(d). Even if it did, no purpose is served by insisting on a further application being made”.
4. For those reasons the appellant was entitled to have his appeal allowed. I set aside the determination of the First-tier Tribunal and substitute a decision allowing the appellant’s appeal.

C M G OCKELTON  
VICE PRESIDENT OF THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER  
Date: 6 August 2013