



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

**Appeal  
Number**

**IA/34869/2013**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1 July 2014 at On 3 July 2014  
Determination  
promulgated**

**Before**

**Deputy Judge of the Upper Tribunal I. A. Lewis**

**Between**

**Carol Dulnuan Accatan  
(Anonymity direction not made)**

**Appellant**

**and**

**Secretary of State for the Home Department  
Respondent**

**Representation**

For the Appellant: Mr N Butt of West Ham Solicitors.  
For the Respondent: Mr G Jack, Home Office Presenting  
Officer.

**DETERMINATION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Wallace promulgated on 12 February 2014, dismissing the Appellant's appeal against the Respondent's decision dated 1 August 2013 to refuse to vary leave to remain and to remove the Appellant from the UK.

## **Background**

2. The Appellant is a national of the Philippines born on 10 May 1980. She arrived in the UK on 2 July 2009. Her immigration history is summarised at paragraph 4 of the determination of the First-tier Tribunal. She was most recently granted leave to remain as a Tier 4 (General) student on 12 February 2013 valid until 19 June 2013. On 18 June 2013 the Appellant applied for a further variation of leave as a Tier 4 student. Her application was refused for reasons set out in a combined Notice of Immigration Decision and 'reasons for refusal' letter dated 1 August 2013, which also communicated the decision to remove the Appellant pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006.

3. The Appellant appealed to the IAC. She elected to have her appeal determined without a hearing 'on the papers'.

4. The Appellant's appeal was dismissed by the First-tier Tribunal for reasons set out in the determination promulgated on 12 February 2014.

5. The Appellant applied for permission to appeal to the Upper Tribunal, which was granted on 12 May 2014 by First-tier Tribunal Judge Cruthers, who also extended time for lodging the application.

## **Consideration**

6. The Appellant's application was refused under the Immigration Rules essentially because she did not submit with her application a Confirmation of Acceptance for Studies (CAS). The First-tier Tribunal Judge upheld the Respondent's decision in this regard.

7. Although the Appellant has sought to challenge the decision taken under the Rules in the application for permission to appeal, by pleading that the Respondent had not exercised a discretion under the Immigration Rules "*justly and fairly*", and that the First-tier Tribunal Judge had fallen into similar error, such Grounds did not find favour with Judge Cruthers in granting permission to appeal, and are not pursued before me by Mr Butt who very properly acknowledged that the Appellant could not succeed under the Rules in circumstances where she had no CAS to support her application.

8. Judge Cruthers granted permission in respect of human rights-based grounds, observing “*articles 6 and 8 of the European Convention on Human Rights (“ECHR”) are raised, in unparticularised terms, in the 23 August 2013 covering letter to the appellant’s appeal notice*”, and opining that it was “*arguable that the judge erred by not addressing human rights law issues in her determination*”. Nonetheless Judge Cruthers sounded a note of caution: “*The appellant should not take this grant permission as any indication that the appeal will ultimately be successful: it seems unlikely that this is the sort of appeal that could succeed on a human rights law basis*”.

9. Human rights grounds were indeed raised in the covering letter of 23 August 2013: “*The decision is unlawful because it incompatible with Appellant’s rights under Article 8 of the ECHR. The decision is unlawful under Article 6 of the ECHR*”. Absolutely no further particulars were given in respect of Article 8. A document headed Application for Extension of Time pleaded Article 6.

10. Under cover of letter dated 23 November 2013 the Appellant submitted more detailed Grounds of Appeal, together with a Witness Statement and supporting documents. The Grounds of Appeal invoke Article 8 on the basis that “*the Appellant is living and studying in the UK legally and lawfully as law-abiding person since 2009*”, adding that she had not involved herself in any illegal activity, and had fully complied with the immigration conditions as a *bona fide* student. It is also stated that she “*has already been paying large amounts towards tuition fees every year*” and that the Respondent’s decision was “*a clear violation and interference into [her] personal life*”: the decision deprived her of the opportunity to continue studies, and would impact upon the academic and social ties established in the UK. The Appellant’s witness statement did little more than rehearse the relevant immigration and application history: beyond referring to the fact of study, it did not particularise any private life. The supporting evidence was confined to issues relating to the application under the Rules.

11. Mr Butt essentially relies upon Judge Cruthers’ identification that Judge Wallace failed to address the human rights grounds in her determination.

12. Mr Jack tentatively submits that it may be implied that the Judge did not address directly the human rights grounds because they lacked any merit. In any event, it is submitted on behalf of the Respondent that the Judge made findings to the effect that the

evidence before him was unreliable, and accordingly the Appellant had failed to establish a relevant foundation that might support an Article 8 claim; further or alternatively there was no substance to the matters raised by the Appellant.

13. As noted above, there was no supporting evidence in respect of private life beyond the educational documents relied upon by the Appellant in the context of her application and appeal under the Rules. Further, there was no information provided in the Appellant's witness statement relevant to private life beyond her educational pursuits.

14. As regards the educational documents, the Judge did indeed find them to be contradictory, inconsistent, and lacking (determination at paragraph 19), and also found there to be a lack of explanation as to where the Appellant had been studying (paragraph 18).

15. In such circumstances I accept Mr Jack's submission that there was no sound evidential basis upon which an Article 8 claim could be made out.

16. Further and in any event, in light of the decisions in **Patel and others [2013] UKSC 72** (see in particular per Lord Carnwath at paragraph 57), and **Nasim and others (Article 8) [2014] UKUT 00025 (IAC)** (in particular that a person's human rights are not enhanced by not committing criminal offences or not relying on public funds), and in the absence of evidence of any circumstances that set the Appellant's case apart from others, I am satisfied that the Appellant could not have succeeded on her appeal on human rights grounds on the basis of wishing to pursue the opportunity to complete studies in the UK.

17. Accordingly, whilst it is unsatisfactory that the First-tier Tribunal Judge did not expressly address the Article 8 grounds raised by the Appellant, and that such a failure amounts to an error of law, I decline to set aside the First-tier Tribunal's decision because dismissal of the appeal on human rights grounds would have been inevitable.

## **Decision**

18. The appeal is dismissed. The decision of the First-tier Tribunal Judge stands.

**Deputy Judge of the Upper Tribunal I. A. Lewis 1 July 2014**