



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/47200/2013

**THE IMMIGRATION ACTS**

Heard at: Manchester  
On: 4<sup>th</sup> August 2014

Determination Promulgated  
On 10<sup>th</sup> October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

and

Ms Peihua Yan

Appellant

Respondent

For the Appellant: Mr Harrison, Senior Home Office Presenting Officer  
For the Respondent: Mr Mbrariti, Johl and Company Solicitors

**DETERMINATION AND REASONS**

1. The Respondent is a national of China date of birth 11<sup>th</sup> November 1989. On the 7<sup>th</sup> May 2014 the First-tier Tribunal (Judge De Haney) allowed her appeal against the decision of the Secretary of State to refuse to vary her leave to remain and to remove her pursuant to s47 of the Immigration Asylum and Nationality Act 2006.
2. The Respondent had applied for further leave to remain as a Tier 4 (General) Student Migrant. She had come to the UK in order to study for a Masters degree, for which she was paying the University of Liverpool a fee of £11,862.

Before she could start that course she was required to take a short English language course. She was granted leave to enter as a Tier 4 Migrant in order to take that course and then applied to extend her visa so that she could start her Masters.

3. The Secretary of State refused to grant such leave on the grounds that the Respondent had not demonstrated that she had adequate funds in place. She was required to show that she had £19,062 for a period of 28 days. Paragraph 1A(h) of Appendix C stipulates that the “end of the 28 day period will be taken to be the closing balance on the most recent of the specified documents”. Since the bank statements submitted closed on the 24<sup>th</sup> September 2013 that was the date picked. There had to be £19,062 in the account/s for a continual 28 period between the 28<sup>th</sup> August 2013 and the 24<sup>th</sup> September 2013.
4. The First-tier Tribunal accepted the Secretary of State’s point about paragraph 1A(h) of Appendix C. If the ‘start date’ was taken as the 28<sup>th</sup> August the Respondent was indeed short of approximately £7,000 on that day. The appeal accordingly fell to be dismissed under the Rules. The First-tier Tribunal went on to note that if the 28 day period had been taken to run from the 29<sup>th</sup> August 2013 to the 25<sup>th</sup> September 2013 the Respondent had the requisite amount of funds. Had the bank statements ended one day later than they did, the Respondent would have been successful in her application. That this was so was evidenced before the First-tier Tribunal by production of the original statements. The Tribunal noted the terms of the Secretary of State’s ‘evidential flexibility’ policy discussed in Rodriguez [2013] UKUT 00042 (IAC) and remarked that the failure to ask the Respondent for further bank statements was a decision of which Franz Kafka would be proud. Turning to consider Article 8 the determination finds that the Respondent is a *bona fide* student who has already committed in excess of £20,000 to her education here. All this would be lost if she was not permitted to complete the Masters degree that she came here to do. The Tribunal had regard to recent visit of the Mayor of London and the Chancellor of the Exchequer to China when they declared that the UK was “open for business” for Chinese students and business. The Tribunal did not consider that the Secretary of State had shown this decision, with its serious consequences for the Respondent, to be proportionate and allowed the appeal on the ground that it was an unlawful interference with the Respondent’s private life.
5. The Secretary of State now has permission to appeal against that decision on the grounds that the Tribunal failed to have regard to the authorities of Gulshan [2013] UKUT 00640 (IAC) and Nagre [2013] EWHC 720 (Admin). It is submitted that the Tribunal should only have considered Article 8 if there were compelling circumstances not recognised by the Rules.

## **Error of Law**

6. These grounds were evidently drafted before the Court of Appeal decision in MM v SSHD [2014] EWCA Civ 985 was handed down. At paragraph 128 Aikens LJ considers the proposition that cases such as Nagre introduced some second hurdle for claimants to get over in establishing an Article 8 case:

...*Nagre* does not add anything to the debate, save for the statement that if a particular person is outside the rule then he has to demonstrate, as a preliminary to a consideration outside the rule, that he has an arguable case that there may be good grounds for granting leave to remain outside the rules. I cannot see much utility in imposing this further, intermediary, test. If the applicant cannot satisfy the rule, then there either is or there is not a further *Article 8* claim.

7. In this case Judge De Haney plainly considered that there were good grounds for granting leave to remain. He identified the compelling circumstances as the fact that this genuine student stood to lose upwards of £20,000 and waste a year of her life. There is no requirement in law that he impose a further intermediary test. He had found the decision to interfere with the Respondent's private life and in those circumstances the burden of establishing that the interference was justified and proportionate fell on the Secretary of State. That burden was not discharged. The decision was open to the Judge on the facts and the determination contains no error of law.

## **Decision**

8. The determination of the First-tier Tribunal contains no error of law and it is upheld.

Deputy Upper Tribunal Judge Bruce  
3<sup>rd</sup> October 2014