



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

Appeal Number: IA/53371/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 23 April 2015**

**Determination
Promulgated
On 1 May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MANJU BARAL
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms A Fijiwala of the Specialist Appeals Team

For the Respondent: Mr S Jaisri of Counsel instructed by Sam Solicitors

DECISION AND REASONS

The Respondent

1. The Respondent to whom I shall refer as the Applicant is a citizen of Nepal born on 19 March 1982. On 17 January 2006 she arrived with entry clearance as a student. That leave was extended on a number of occasions and then varied to leave as a Tier 1 (Post-Study Work) Migrant which in turn was varied to leave as a Tier 4 (General) Student Migrant which expired on 14 October 2013. On that day, in time, the Applicant

applied for further leave in the same capacity. On 29 November 2013 the Appellant (the SSHD) refused the application and decided to remove the Applicant by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

Appeal to the First-tier Tribunal

2. On 13 December 2013 the Applicant lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds are brief, generic and formulaic and refer in similar vein to Article 8 of the European Convention. No further details are contained in the grounds.

The First-tier Tribunal's Decision

3. By a decision promulgated on 31 December 2014 Judge of the First-tier Tribunal J S Law allowed the appeal of the Applicant under the Immigration Rules. He found at paragraph 14 that if the SSHD had complied with its practice on revoking the licence of the college at which the Applicant had been studying then the Applicant would have had a period time to find an alternative educational provider but the Applicant had not been afforded such an opportunity..
4. The SSHD sought permission to appeal on the grounds that the Judge had incorrectly directed himself as to the requirements of the Immigration Rules. He had failed to take into account that the appeal was bound to fail under the Immigration Rules because the Applicant had not provided a valid Certificate of Acceptance for Studies (CAS). Further, the Judge had taken into account evidence of the Applicant's intention to study at the University of Sunderland which had not been submitted to the SSHD at the time of the Applicant's original application and so was not admissible evidence by reason of Section 85A of the 2002 Act.
5. By a decision of 11 February 2015 Judge of the First-tier Tribunal Alan R Williams granted the Respondent permission to appeal on the two grounds described in the SSHD's application.

The Hearing in the Upper Tribunal

6. The Applicant attended the hearing with a friend. Mr Jaisri informed me he had discussed the appeal with Ms Fijiwala. He was instructed to concede there was an error of law as disclosed in the grounds in the SSHD's application for permission to appeal. Both representatives acknowledged the point made by the Judge at paragraph 14 of his decision and that there had been some procedural unfairness because the Applicant had not been given the opportunity to find an alternative educational provider. In these circumstances both agreed that the whole matter should be remitted to the SSHD.

Findings and Consideration

7. In view of the parties' agreement that the First-tier Tribunal's decision contained material errors of law as identified in the grant of permission, I find that it must be set aside in its entirety. In view of what the parties had stated in relation to the issues raised at paragraph 14 of the decision, I find that the original decision of the SSHD was not in accordance with the law and therefore the matter should be remitted to the SSHD to make a lawful decision.

Anonymity

8. There was no request for an anonymity order and having considered the matter I find none is warranted.

NOTICE OF DECISION

The decision of the First-tier Tribunal contained an error of law such that it should be set aside. The following decision is substituted:

The decision of the SSHD is not in accordance with the law. The matter is remitted to the SSHD for a lawful decision to be made.

Signed/Official Crest

Date 27. iv. 2015

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal

TO THE SSHD: FEE AWARD

The matter has been remitted to the SSHD. For the reasons given in the First-tier Tribunal's decision I find that it is not appropriate to make a fee award.

Signed/Official Crest

Date 27. iv. 2015

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal