



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

Appeal Number: IA 06882 2013

THE IMMIGRATION ACTS

**Heard at Field House
On 19 September 2013**

**Determination Promulgated
On 4 October 2013**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PORNPRAPA HANRITTHA

Respondent

Representation:

For the Appellant: Ms Z Kiss, Senior Home Office Presenting Officer

For the Respondent: No appearance

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal to dismiss under the rules an appeal by the respondent, who I will call the claimant, against the Secretary of State's decision to refuse to extend her leave to remain and to remove her from the United Kingdom but to allow her appeal against the decision with reference to Article 8 of the European Convention on Human Rights.
2. The claimant is a citizen of Thailand who was born in 1983 who has lived in the United Kingdom since May 2009 with permission as a student. At the end of July 2012, shortly before her leave was about to expire, she applied for her leave to be varied and for further permission to stay as a student. There was an obvious difficulty in the application. It looked as though the claim could not possibly succeed because it would result in her having more than three years' leave in the United Kingdom as a Tier 4 Migrant studying at below graduate level.
3. As Ms Kiss has pointed out, this requirement came into the Rules a full year before the claimant made her application and she either knew or should have

known that she had made an application that could not succeed. It may be that she knew because she tried to get round the problem by a rather contrived argument suggesting that she had not actually spent more than three years in undergraduate study. This was an argument that failed before the First-tier Tribunal being, as the judge found, based on an unbelievable scenario. That finding has not been challenged.

4. It follows therefore that the First-tier Tribunal Judge had no difficulty in concluding that the appeal under the Rules had to be dismissed.
5. The First-tier Tribunal judge then allowed the appeal on Article 8 grounds and has given skimpy reasons for that finding. It is really only by going to the claimant's witness statement that any sense can be made of the decision. There, she said that her family had supported her in the sum of between £10,000 to £12,000 for her maintenance and course costs and this would be lost if she was not allowed to complete the course that she had started. The judge said, rather confusingly, "I accept that the application of the Immigration Rules are necessary to apply a consistent set of Rules, but the [claimant] has shown that it would be disproportionate for her to leave the UK before a month subsequent to the conclusion of her course in October 2013".
6. I do not understand that, and Ms Kiss for the Secretary of State could not help me. The Secretary of State made her decision made on 19 February 2013. Save for any extension consequent on an application for further leave to remain, the claimant's permission to be in the United Kingdom lapsed on 25 July 2012. I cannot understand why anybody would say that the consequence of the decision would be that the claimant would have to leave the United Kingdom "before a month subsequent to the conclusion of her course in October 2013". I really do not know what the judge meant.
7. It is settled law, and probably in the judge's mind when he referred to **CDS (PBS: "available": Article 8) Brazil [2010] UKUT 00305 (IAC)**, that preventing a person completing a course can have enormous personal consequences. It can frustrate long-held ambitions. It can waste a great deal of money. It can deprive a person of the opportunity of completing a very significant educational achievement.
8. None of these things really impact to the present case where the claimant was studying a one year course with a view to going on to obtain a higher diploma in business management. There is no explanation in the claimant's evidence, for example, for her not continuing the course in Thailand or elsewhere, or why the sums spent would be wasted. Sometimes fees can be refunded or transferred.
9. Neither is there any consideration on the part of the First-tier Tribunal Judge of the fact that the problem was entirely of the claimant's own making. She pressed ahead with a course when she really should have appreciated that she was not going to be given permission to remain.
10. The decision to allow the appeal on article 8 grounds is clearly wrong. At the very least it is not explained in a way that can be understood. In the absence of any explanation it does not show proper regard to the requirements of the Immigration Rules to ensure consistency and fairness in immigration policy.

Neither does it pay any regard at all to the requirement of the Rules that requires a person to leave the United Kingdom after more than three years' undergraduate study.

11. Clearly, the will of Parliament expressed in the Rules is that ordinarily people cannot be allowed to stay in the United Kingdom as undergraduate students until such time as they become entitled to remain by some other route. That is just not what the Rules intend to do concerning the admission of students.
12. In the circumstances I set aside the decision of the First-tier Tribunal.
13. I then have to decide what to do. The difficulty in the case is that the claimant did not attend the hearing in the Upper Tribunal. I do not know why she did not attend. She was given proper notice of the hearing at the address she used on her witness statement being the same address recorded on the Tribunal's papers as the address for service. Although I have tried to understand the claimant's case and Ms Kiss has presented the Secretary of State's case fairly, I have little option but to say the case must be dismissed on Article 8 grounds. There is nothing before me which will enable me to conclude properly that it would be other than a wholly proportionate interference with her private and family life to remove her for the purpose of maintaining immigration control and an orderly immigration policy. These things impact on the economic well being on the United Kingdom and on the rights and freedoms of others.
14. Whether I would have reached this conclusion if she had come and told me that she only needed a very short period of leave to remain to complete her course, I just do not know. She did not, and that is not any fault of mine of the Secretary of State's.
15. In the circumstances I allow the Secretary of State's appeal and set aside the decision of the First-tier Tribunal Judge.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 3 October 2013