



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

Appeal Numbers: IA/24911/2012
IA/24913/2012
IA/24914/2012
IA/24916/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 26 June 2013**

**Determination Promulgated
On 2 August 2013**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**MRS JAGRUTIBEN PANKAJKUMAR CHAVDA
MR SURESHBHAI PANKAJKUMAR CHAVDA
MASTER JINIL PANKAJKUMAR
MS MAHI PANKAJKUMAR CHAVDA**

(NO ANONYMITY DIRECTION)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms S Shah, instructed by Robinson Ravani & Co Solicitors
For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. These appellants appeal with permission against the dismissal of the principal appellant's application to vary leave to remain as a Tier 4 (General) Student Migrant under the points-based system, and the appeals of her husband and two children against the decision not to vary their leave to remain as her dependents, in line with the principal appellant's application. is the determination in the appeal of Mrs Jagrutiben Pankajkumar Chavda.
2. The accompanying decisions to remove the appellants under Section 47 of the Immigration, Asylum and Nationality Act 2006 are unlawful, as the Upper Tribunal held in *Adamally and Jaferi (section 47 removal decisions: Tribunal Procedures) Sri Lanka* [2012] UKUT 414 (IAC). Mr Nath accepts that the s.47 decisions cannot be sustained.
3. However, in relation to the refusal of the applications for leave to vary, there were two issues, the first being that the principal appellant's CAS was not accompanied by the supporting evidence as it should have been. At paragraph 16 of the determination the judge found that the respondent had failed to apply the evidential flexibility policy and to call for the missing documents and that the appellant was entitled to succeed on that ground in relation to the certificate. There is therefore no issue on the CAS and the respondent has not filed a Rule 24 notice raising any issue on that point.

The Maintenance (Funds) issue

4. At the date of application the appellant's funding, as she disclosed it, fell short by £10.03 of the required figure of £4300. £10.03 is not a large sum but the Rules are plain. Ms Shah conceded both at first instance and before me that the appellant had not provided evidence to show that she had any greater sum. It is now suggested that she had another bank account, for which she can produce a bank statement which would take her account over the required sum of £4,300, but the bank statement for that account which is in court today is not dated within the 28 days before the period ending 17 August 2013 and therefore cannot assist the appellant.
5. The appellant challenges the finding that an account in her husband's sole name can not be prayed in aid. Again, the Rules are perfectly plain on this point and reliance on an account in her husband's sole name is not permitted. The position thus remains that the appellant, when she submitted her application, did not submit evidence that she had the required sum of £4,300, and accordingly the immigration appeal cannot succeed.

Article 8 ECHR

6. Permission to appeal was also granted on Article 8 ECHR but that was not pursued in the skeleton argument before me. As noted in the grant of permission, the Article 8

claim was on any view a weak one since this family would be removed, if at all, together, and none of them are British or EU citizens.

7. Accordingly, on all of the grounds in the grounds of appeal, save that relating to Section 47, the appellant's appeal fails.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I set aside the decision and remake it by allowing the appeal against the decision to make removal directions under s.47 Immigration, Asylum and Nationality Act 2006.

The appeal is dismissed on all other grounds, including human rights grounds.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. Nothing in the documents before me indicates that anonymity is necessary or appropriate in these appeals.

Signed

Date

Upper Tribunal Judge Gleeson