



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/07478/2014**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Determination

On 4 September 2014

Promulgated

On 8 September 2014

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MISS NATTHAYA CHANJANG
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondent: No appearance

DETERMINATION AND REASONS

Introduction

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge Molloy on 15 July 2014 against the determination of First-tier Tribunal Judge Mark-Bell who had allowed the Respondent's appeal against the refusal of her application for leave to remain as the spouse of a Points Based System migrant. The

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determination was promulgated on 1 May 2014. The appeal was determined on the papers as the Respondent had requested.

2. The Respondent is a national of Thailand, born on 12 September 1982. The Respondent had been granted leave to enter the United Kingdom as a Tier 4 (General) Student Migrant until 1 January 2014. On 27 December 2013 she applied for leave to remain as the dependant partner of a Points Based System migrant, her husband Mr Khanut Kaenwiangrat, who had leave to remain as a Tier 4 (General) Student Migrant until 26 January 2015. They had married in the United Kingdom on 18 July 2013. The application was refused on 22 January 2014, because the Respondent had not previously had leave as a dependant partner. The application was refused under paragraph 319C(i)(iv)(3) of the Immigration Rules. Removal Directions under section 47 of Immigration, Asylum and Nationality Act 2006 were made.
3. Permission to appeal was granted because it was considered arguable that the judge had not applied the Immigration Rules correctly.
4. Standard directions were made by the tribunal, indicating that the appeal would be reheard immediately if a material error of law were found.
5. When the appeal was called on for hearing, there was no appearance by the Respondent nor any application for an adjournment in consequence. The tribunal noted that the Respondent had chosen not to appear at the First-tier Tribunal. Having satisfied itself that notice of the time, date and place of the hearing had been duly served on the Respondent, the tribunal decided that it should proceed in the Respondent's absence.

Submissions - error of law

6. Mr Tufan for the Appellant (the Secretary of State) relied on the grounds on which permission to appeal had been granted. Plainly [8] of the reasons for refusal letter, of which the judge had complained, was a simple typographical error. The words "Tier 4 (General) Student Migrant" should be substituted for the name of the

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Respondent's husband. The judge had misdirected himself in two ways at [9] of his determination. There were no transitional provisions and so the application had to be determined by the Immigration Rules in force at the date of decision: Odelola [2009] UKHL 25. In any event, the judge had further misdirected himself when stating that the Points Based System migrant sponsor (i.e., the Respondent's spouse) was required to have leave to remain for at 12 months or more, and be sponsored by a Recognised Body, which the Respondent's husband met. The judge did not appreciate the difference between a "Recognised Body" and a "Listed Body", which were separate concepts. The Respondent's husband's college was a Listed Body. Mr Tufan produced to the tribunal the relevant lists.

Material error of law finding

7. The tribunal studied the two lists as produced by Mr Tufan. Recognised Bodies as defined have degree award powers granted by Royal Charter, United Kingdom statute or the Privy Council. The Respondent's husband is studying at the Ealing, Hammersmith and West London College. That college is merely a Listed Body and so the Respondent's husband is not qualified to sponsor her. Mr Tufan's submission on that element of the appeal is plainly right and must succeed.
8. No transitional provisions were in place, so that the Respondent was required to satisfy the Immigration Rules in place as at 22 January 2014. Suffice it to say that the relevant rule, paragraph 319C(i)(iv), makes no provision for switching categories as the Respondent wished to do:

(iv) the following conditions must be met:

(1) the relevant Points Based System Migrant must be applying for entry clearance, leave to enter, or leave to remain, to undertake a course of study that is longer than six months and either:

(a) have entry clearance, leave to enter, or leave to remain as a Tier 4 (General) Student or as a student to undertake a course of study longer than six months; or

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(b) have last had entry clearance, leave to enter, or leave to remain within the three months preceding the application as a Tier 4 (General) Student or as a student to undertake a course of study longer than six months; and

(2) the Partner must either:

(a) have entry clearance, leave to enter, or leave to remain as the Partner of a Tier 4 (General) Student or a student with entry clearance, leave to enter, or leave to remain, to undertake a course of study longer than six months; or

(b) have last had entry clearance, leave to enter, or leave to remain within the three months preceding the application as the Partner of a Tier 4 (General) Student or as a student to undertake a course of study longer than six months; and

(3) the relevant Points Based System Migrant and the Partner must be applying at the same time.

9. The judge fell into material error on both issues. His determination must be set aside. The First-tier Tribunal's decision is remade in the only way permissible, namely that the original Appellant's appeal is dismissed.

DECISION:

The making of the previous decision involved the making of a material error on a point of law. It is set aside and remade as follows:

The original Appellant's appeal is dismissed

Signed

Dated

Deputy Upper Tribunal Judge Manuell

TO THE SECRETARY OF STATE
FEE AWARD

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The appeal was dismissed and so there can be no fee award

Signed

Dated

Deputy Upper Tribunal Judge Manuell