Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/49608/2013

THE IMMIGRATION ACTS

Heard at Eagle Building, Glasgow	**Decision and Reasons Promulgated**
On 27 May 2015	**On 04 June 2015**

Before

The President, The Hon. Mr Justice McCloskey and
Deputy Judge of the Upper Tribunal JG MacDonald

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PRATHIBA SIVATHMIKA SENTHILVEL

Respondent

Representation:
Appellant: Mrs M O'Brien, Senior Home Office Presenting Officer
Respondent: Unrepresented

DETERMINATION AND REASONS

1. This appeal originates in a decision made on behalf of the Appellant, the Secretary of State for the Home Department (the "Secretary of State"), dated 14 November 2013, whereby the application of the Respondent, a national of India aged 25 years, for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant was refused. The reason for refusal was expressed in the following terms:

> "… You would have to prove that you have the required maintenance fees of £1,600 plus any outstanding course fees for the first year of your course ….

> Your course fees are £8,500 for the first year of your course and you have paid £4,250 towards this fee … You are required to show that you are in possession of £5,850 for a consecutive 28 day period ….
>
> As the closing dates of the bank statements …… are 25 September 2013, you need to show evidence of £5,850 maintenance for 28 days from 29 August 2013 to 25 September 2013. However, between 29 August 2013 and 17 September 2013 your bank statements state that you were in possession, in total, of no more than £1,602.18."

The application was, therefore, refused on the ground that the Respondent failed to satisfy the maintenance (funds) requirement enshrined in the relevant provisions of the Immigration Rules, viz paragraph 245ZX and Appendix C.

2. The determination of the First-tier Tribunal (the "FtT"), which was made without a hearing, considered the evidence provided, including a letter from the Respondent's university dated 22 November 2013. This letter details that the course which the Respondent was pursuing began on 10 September 2013 and was scheduled to finish on 19 December 2014. It continues:

> "I acknowledge there was some confusion over the payment of fees but I wish to confirm that all outstanding fees have been paid."

As we observed at the hearing, we consider it important to categorise this letter correctly. It did not constitute fresh evidence in the sense of the belated provision of something which, per the requirements of the Immigration Rules, should have been provided with the underlying information. Rather, it constituted evidence bearing on the facts obtaining at the material time. There was, therefore, no statutory prohibition on its admissibility and the contrary was not argued on behalf of the Appellant.

3. In his determination the Judge said the following of the letter:

> "It is clear from the university letter of 22 November 2013 that 'all outstanding fees have been paid'. I therefore take that to mean that by the date of decision the total course fee payment of £8,500 had been met. It is unfortunate that the precise date for that is unclear from the appeal papers, but I give the Appellant the benefit of the doubt in the round."

Within the grant of permission to appeal, one finds two contentions. The first is that it is not clear whether the appeal was allowed under the Immigration Rules or Article 8 ECHR. The second is that the decision is insufficiently reasoned.

4. With due respect to the permission Judge, we find no substance in either of these grounds. We consider it abundantly clear from the determination as a whole that the appeal was allowed under the Immigration Rules. Since the letter from the university did not contain chapter and verse relating to the payment of the course fees, it was incumbent upon the Judge to analyse and construe it. This he did. The only basis upon which his assessment and construction of the letter and the ensuing finding made by him could be challenged is that of irrationality. This entails an elevated threshold which is plainly not overcome. The Judge's evaluation of the letter clearly lay within the band of what was open to a reasonable Judge, properly self-

directed. When one takes into account all of the objective evidence, it was plainly open to the Judge to conclude that the course fees had been paid in full by the Respondent at the time when the impugned decision was made. Thus the various calculations contained in the decision were erroneous. The effect of the Judge's finding in relation to payment of the course fees was that the application should have been allowed.

5. Nor do we find any substance in the complaint of inadequate reasoning. It is appropriate to make the observation that this was not one of the complaints advanced in the application for permission to appeal. Given the markedly narrow dimensions of the issue to be decided by the Judge, we consider the reasoning perfectly clear. The determination hinges on a finding which, as rehearsed above, we consider unassailable. We would add that there is no sustainable complaint of misdirection in the determination. The Judge noted, correctly, that the burden of proof was on the Respondent and the applicable standard of proof was that of the balance of probabilities. The formulation contained in the penultimate paragraph of the determination *viz* "the benefit of the doubt in the round" is to be considered in this context and, in our judgment, discloses no error of law.

DECISION

6. For the reasons elaborated above, the appeal is dismissed.

Signed: Edward McCloskey.

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Date: 27 May 2015