



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

Appeal Number: OA/09691/2012

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 18 June 2013**

**Determination**

**Promulgated**

**On 26 June 2013**

**Before**

**UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**MISS FARZANA RAHMAN MUNNI**

Appellant

**and**

**ENTRY CLEARANCE OFFICER - DHAKA**

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Miss A Everett, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Bangladesh born on 23 December 1978. On 5 April 2012 the appellant submitted an application to enter the UK as a Tier 1 (Post-Study work) Migrant. In support of this application she submitted a letter from Kaplan dated 4 April 2012 which stated that *“the final assessments have been marked by Kaplan Financial and a*

*recommendation of a pass has been made to the University. Due to technical issues with the university system, marks are awaiting confirmation by the University exam board on 1 June 2012*". The letter went on to say that the appellant would receive her certificate and transcript which is expected to be on the certification date, namely 24 September 2012.

2. On 19 April 2012 the respondent refused the appellant's application on the basis that the appellant had failed to produce a qualification certificate within twelve months of obtaining it.
3. The appellant's appeal was allowed by First-tier Tribunal Judge N M K Lawrence. He held as follows:

"12. The appellant is unable to produce the original degree certificate at the date of the application. However, she did the next best thing according to the respondent's own guidelines. She provided a letter, dated 2 April 2012, from Kaplan, which meets all of these requirements set out in those Guidelines. The respondent was quite correct to say that the marks awarded by Kaplan has not been confirmed by Liverpool John Moores University and this is because of *'technical issues with the University system'* and not because she has not passed the examination. The letter goes on to confirm, in clear and unequivocal terms that the appellant *'will receive'* her certificate on the 24<sup>th</sup> of September 2012.

13. In my view the appellant meets the eligible qualification requirement and she ought to have been awarded the 20 points she is entitled to.

14. The second issue is whether the appellant was able to submit the eligible qualification within twelve months of obtaining it. If this is to mean twelve months prior to the date of the application the appellant cannot meet it. However, if within twelve months of obtaining it she does. If it is to be the former then the respondent ought to have exercised discretion in the appellant's favour. She could not possibly produce a document which she has not been issued with. In this regard I turn to the judgment in **Forrester [2008] EWHC 2307 (Admin)**. The High Court found that the respondent *'is given a discretion and she is given a discretion on the basis that it will be exercised with a modicum of intelligence, common sense and humanity. It might be asked, in these circumstances, what possible reason there could have been for not exercising the discretion in this claimant's favour'*. I am at a loss to identify the logic behind the respondent's refusal to exercise discretion in this appellant's favour. I find the respondent's approach to this case is 'tick box' decision making and not giving weight to the issues. I find if discretion is properly

exercised the appellant should be entitled to 15 points under this category.”

4. In the notice of immigration decision issued by the respondent, the appellant was informed that her application does not attract a full right of appeal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. Her right of appeal is limited to any or all of the grounds referred to in Section 84(1)(b) and (c) of the Nationality, Immigration and Asylum Act 2002, namely:
  - “(b) The decision is unlawful by virtue of Section 19(b) of the Race Relations Act 1976 (c.74) discrimination by public authorities;
  - (c) That the decision is unlawful under Section 6 of the Human Rights Act 1998 (c.42) (Public authority not to act contrary to Human Rights Convention) as being incompatible with the appellant's Convention rights.”
5. On the issue of discrimination the judge found that Mr Ahmed's submissions were utterly unmeritorious. Mr Ahmed could not identify the sort of discrimination he alleges Kaplan and UKBA practised against the appellant.
6. In respect of Section 6 of the Human Rights Act 1998, the judge found that the appellant has a “civil right” to have her application for entry clearance to the UK determined fairly. This means on all the evidence taking into account the prevailing law and guidance. A decision taken without due considerations is *ipso facto* wrong in law. In his view in not appearing to have taken into account the full import of the letter from Kaplan dated 2 April 2012, in the light of the prevailing Guidelines, the respondent had failed to determine the appellant's “civil rights” fairly. Consequently he found that the respondent's decision was contrary to Section 6 of the Human Rights Act 1998. The respondent's decision was therefore wrong in law.
7. As the judge allowed the appellant's appeal under the Immigration Rules he did not consider the appellant's appeal under Article 8. However for the sake of completeness he found that the appellant came to the UK to get her qualification and that is exactly what she had achieved. Therefore Article 8 was not engaged.
8. The respondent was granted permission to appeal on the grounds that the judge materially erred in law by allowing the appellant's appeal under the Immigration Rules as the appellant's application did not attract a full right of appeal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.
9. In order to understand the background to the appellant's appeal, I set out briefly the facts of the appellant's case. The appellant first came to the UK

on 1 July 2009 as a student. She had leave to remain in the UK until 31 December 2011. The sponsor was Kaplan Financial Limited. On 16 March 2010 the appellant switched to an Induction programme and MSc in International Banking and Finance, with the same sponsor, Kaplan. The educational institution was Liverpool John Moores University. The completion date was 27 February 2012. When she made this switch she informed the UKBA that this was course was scheduled to finish on 27 February 2012.

10. The appellant completed all her examinations by August 2011 except a dissertation, which had to be completed by 31 January 2012. Her leave to remain however was due to expire on 31 December 2011. In order to seek further leave to remain in the UK the appellant sought a CAS letter from Kaplan. Kaplan could not issue the appellant with a CAS letter because she had not completed her dissertation. Kaplan advised the appellant to return to Bangladesh and submit the dissertation from there. It also advised the appellant that she could apply for entry clearance to return to the UK. The appellant returned to Bangladesh on 28 December 2011. She completed her dissertation and submitted it on time.
11. It is apparent from the determination that when the appellant submitted her application for leave to enter the UK as a post-study worker on 5 April 2011 and when it was refused, fourteen days later, on 19 April 2012, that the appellant did not have a qualification certificate. The letter from Kaplan dated 2 April 2012 relied on by the judge explained that there were technical issues with the university system and that the marks were awaiting confirmation by the university exam board on 1 June 2012. In the body of that letter the award date was given as 1 June 2012". The expected certification date was given as 24 September 2012. In the respondent's bundle is a letter from Liverpool John Moores University dated 16 May 2012 to the appellant confirming that unmoderated dissertation mark is to be considered on 1 June 2012 at the Assessment Board, where it will be ratified and her award will be confirmed.
12. Bearing in mind the sequence of events in mind, I am rather puzzled by some of the documents submitted by ECS (Ethnic Community Service UK Ltd) to the First-tier Tribunal when they lodged an appeal against the respondent's decision on the appellant's behalf on 25 July 2012. They submitted a letter from Liverpool JMU dated 23 July 2012 saying "*This letter is to confirm that the above named student successfully completed all "his" taught modules on the MSc International Banking & Finance programme. She was awarded on 16 March 2012 and will have graduated in July 2012*". On 30 August 2012 ECS submitted a letter to the First-tier Tribunal saying that they had been asked by the appellant to forward a copy of certificate "Degree of Master of Science" in International Banking and Finance issued by Liverpool John Moores University in support of her appeal. The award certificate that was submitted was issued on 11 April 2012. ECS said the original was available on demand. In her sworn witness statement dated 30 December 2012 the appellant stated that on

23 July 2012 Liverpool John Moores University confirmed to her that she was awarded a certificate on 16 March 2012. The original of that certificate has not been submitted to the court. We do not have the original of the certificate which according to Kaplan she would have received on 24 September 2012. These documents were not referred to by the judge even though they had been received at the Hatton Cross Hearing centre on 3 January 2013. I find that the information contained in the documents submitted by ECS and in the appellant's sworn statement is inconsistent with the information contained in the letter from Kaplan and from the University to the appellant dated 16 May 2012. If the appellant was awarded the certificate on 11 April 2012, it begs the question why she did not submit it before the respondent refused her application on 19 April, some eight days later, if indeed the document was genuine. If she had been told she was awarded a certificate on 16 March 2012, I question why the certificate is not dated 16 March 2012 but dated 11 April 2012 if they are one and the same document. It is incumbent on the appellant to give a credible account of the award she has received in respect of the course she studied in the UK. In light of the inconsistent evidence I am not able to find that the appellant has been truthful. Had the judge properly considered the evidence that was before him, I find that he would not have reached the findings he made at paragraphs 12 to 14.

13. It also means that the judge's finding at paragraph 20 that the respondent's decision was contrary to s6 of the Human Rights Act 1998 was in error as it was based on his findings at paragraphs 12 to 14.
14. I find that the judge's decision cannot stand. I set it aside and re-make it.
15. In light of my findings at paragraph 12 above, the appellant's appeal is dismissed.

Signed

Date

Upper Tribunal Judge Eshun