Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/21700/2013
IA/21627/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 29 May 2014	**On 29 July 2014**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

SHERYL MARTIN (FIRST APPELLANT)
MARLON MARTIN (SECOND APPELLANT)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Sowerby of Counsel
For the Respondent: Mr Nath, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are citizens of the Philippines. The first appellant is the wife of the second appellant and she was born on 8 September 1979. The second appellant was born on 19 June 1980. The appellants had been

granted entry clearance to the United Kingdom as students from 6 September 2009 until 28 February 2013. They applied to vary their leave to remain on 5 February 2013. The applications were made on the form FLR (O) and, at section 3 of that form ("*which category*?") the applicants have put a cross and marked the form, "*other purposes/reasons not covered by other application forms.*" Reference is then made on the form to "*attached letters*". A letter attached to the application is dated 5 February 2013 and has been written apparently by the first appellant. This letter states that the appellant was applying,

> for an extension of my leave as a student as I am scouting for a new university for my proposed course. I am applying to Kingston University for my master in biomedical science as I recently qualified with the Health Professional Council. I am asking for an extension of my stay so I could attend the interview and I could personally handle the rigorous application procedure for my proposed course of study. ... The start of the master in biomedical science will be on September this year. I want to ask permission from you to grant me a few months' leave so I could organise my entry to the said programe. I would be grateful if you grant me this request. ... I am hoping for your kind consideration with regards to this request for a further extension of my Tier 4 visa.

2. The application was treated by the respondent as an application for a variation of leave to remain on the basis of exceptional circumstances and for a purpose not covered by the Immigration Rules. The refusal reads:

> Your application has been considered on an exceptional basis outside the Immigration Rules. You requested a couple of months' extension of leave on 5 February 2013 to allow you some time to apply to a university to do your masters in biomedical sciences. You have now had more than three months since the date of your request. Your circumstances are not covered by the Immigration Rules and therefore you have been refused under paragraph 332(1).

3. The letter went on to consider the application on Article 8 ECHR grounds but refused it on that basis also. Decisions were also made under Section 47 of the Immigration Asylum and Nationality Act 2006 to remove the appellants. Those decisions were also dated 17 June 2013.

4. The appellants appealed to the First-tier Tribunal (Judge Thanki) which, in a determination promulgated on 20 November 2013, dismissed the appeals. The appellants now appeal, with permission, to the Upper Tribunal.

5. Granting permission, Upper Tribunal Judge Storey, wrote:

> The grounds fail to substantiate the allegation that the judge refused to allow the appellants to produce written evidence and cut short the oral evidence.
>
> However, it is arguable that the judge failed to take into account relevant evidence, in particular the appellant's letter of 5 February 2013. I note that before July 2013 (when the judge thought the first appellant had taken no

steps to secure a masters), she had been offered a place on an MSc biomedical course (on 13 June 2013). Given that the respondent made a decision to curtail, that may possibly make a difference.

6. It is not accurate to say that the respondent had taken a decision to curtail leave of these appellants. They had applied within the validity of their existing visas (expiring 28 February 2013) but their variations had been refused. Their leave was not curtailed by the immigration decisions.

7. It is not disputed that the judge had no option but to dismiss the appeal in respect of the Immigration Rules; the extension of leave which was sought was for a purpose not covered by the Rules. In dealing with the appeal under Article 8 ECHR, the judge found "the appellant's evidence is wholly lacking in credibility" [20]. He found that, "the claim that the first appellant was seeking to undertake a masters degree is in view of her pregnancy probably not practicable although no evidence had been submitted. In any case, the first appellant can return to the Philippines and make her application from there."

8. The grounds of appeal [ground 1] take issue with the judge's finding at [16] that there was "no evidence before me that [the first appellant] ever did apply or was successful or unsuccessful to undertake the masters course as claimed." The grounds draw attention to the enclosure B1 which is the letter of 5 February 2013 which accompanied the application by the first appellant to the UKBA. I refer again to that letter. There is nothing in that letter which is at odds with the observation of the judge which I have quoted above. Certainly, the appellant refers to the masters degree course but the letter does not say that she had applied in any formal way, only that she wanted "a few months' leave" so she could "organise my entry to the said programme." I was told that, in June 2013, the appellant was accepted on the masters degree course but it is entirely unclear whether any such evidence was before the judge (I pause to note again that Upper Tribunal Judge Storey did not grant permission in respect of the allegation by the appellants that the judge had refused to allow them to adduce written evidence or had cut short the oral evidence). To use the language of the grant of permission, the appellant had not taken steps to secure the masters course; she had merely sought an extra period of leave during which she intended to take steps to secure a place. I find that the judge has not misunderstood and misinterepreted the evidence as alleged in the grounds or at all.

9. Even if the judge did fail to take account of all relevant evidence, I have to say that the appeals of these appellants on Article 8 ECHR grounds were doomed to failure in any event. The appellants' application to the respondent was, in effect, an application for further leave to remain (in the case of the first appellant) as a student which was not made on the proper form which made no attempt whatever to comply with the formal requirements of an application in that capacity. Even assuming that the judge had been told that the first appellant had been awarded a place as from September 2013 on the masters course, I can see no basis

whatsoever on which the appellant might be granted a period of Article 8 leave in order to start that course and thereby completely bypass the respondent's detailed requirements for students as set out in the Immigration Rules. There are plainly no circumstances in this case in favour of the appellants in any Article 8 proportionality assessment which would outweigh public interest concerning their removal in pursuit of the legitimate aim of the regulation of immigration control. I find that the First-tier Tribunal did not err in law such that its determination falls to be set aside.

DECISION

These appeals are dismissed.

Signed Date 20 June 2014

Upper Tribunal Judge Clive Lane