



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

Appeal Number: IA/35994/2013

THE IMMIGRATION ACTS

Heard at Field House, London

On 27 October 2014

Determination

Promulgated

On 4 November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTSON

Between

**MISS SANTOSHI BHATTARAI
ANONYMITY DIRECTION NOT MADE**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Rees, Counsel, instructed by Jein, Solicitors

For the Respondent: Mr Tarlow, Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant, a female citizen of Nepal, applied for leave to remain as a Tier 4 (General) Student Migrant pursuant to para 245ZX of HC 395, as amended (the Immigration Rules). Her application was refused pursuant to 245ZX (d) and the provisions of paragraph 13 (b) of Appendix C because she did not provide a birth certificate as confirmation of the relationship between her and the person providing financial sponsorship or a letter

from him confirming that he was prepared to support her during the period of her study in the UK.

2. Her appeal was heard and dismissed by First-tier Tribunal Judge Turquet, and the reasons for her decision are set out in her determination promulgated on 14 August 2014. She found that the letter from the Office of the Karahiya Development Committee dated 15 May 2013 was not a birth certificate because (i) there was no indication of the birth being registered (ii) and the letter was stated to expire on 27 July 2015 and no explanation was provided as to why a birth certificate would expire and (iii) there was no indication as to what evidence was provided to the Committee prior to issue of the letter. The Judge was also not satisfied that this was the same letter that was provided when the Appellant made her initial application, as asserted by the Appellant, because it was dated May 2013 and she arrived in the UK in April 2011. With regard to the letter of consent from her financial sponsor, before the First-tier Tribunal it was submitted on behalf of the Appellant that she did provide a letter of consent when she made her application. The Judge found that she did not.
3. The Appellant applied for permission to appeal on the basis that the decision was not in accordance with the law because:
 - a. The Respondent failed to apply the provisions of paragraph 245AA of the Rules; a birth certificate should have been requested because ““the Birth certification” letter was document in the wrong format”. The Judge’s findings at paragraph 12 were therefore unreasonable.
 - b. The Judge made an unreasonable finding at paragraph 13 in rejecting the Appellant’s evidence that the letter of consent from her father had been submitted with the application.
4. Permission was granted on the basis that it was arguable that the letter was a purported birth certificate which is in the wrong format and the Respondent should have written to the Appellant or her representative and requested the correct document and that the Judge erred in finding the document did not amount to a birth certificate for the purposes of Appendix C. Permission to appeal was granted on all grounds.
5. Before me, Mr Rees relied on the grounds of application, submitting that the Judge should have considered the provisions of paragraph 245AA. When it was put to him that in the grounds of appeal, there was no reference to the exercise of discretion by the Respondent under paragraph 245AA, Mr Rees stated that paragraph 6 of the grounds was wide enough to include this provision and this was clearly the view taken by Judge Osborne, who granted permission. Mr Tarlow submitted that the Immigration Rules were specific as to the evidence required; a birth certificate was not provided and the document was in the wrong format. He could not say whether birth certificates were not issued in Nepal because he simply did not know. The Respondent would not request a document where there was no reason to believe that the correct document was available. In response, Mr Rees submitted that the Judge had erred in

stating that the birth certificate was to expire on 27 July 2015. It was the notary's certificate that was due to expire on that date, not the birth certificate.

6. On conclusion of submissions, I reserved my decision which I give below together with my reasons

Decision and reasons

7. I find that the grounds of appeal before the Judge were not wide enough to include a challenge under s 84 (f) of the Nationality, Immigration and Asylum Act 2002. No mention was made of the failure by the Respondent to exercise differently a discretion conferred by the Immigration Rules; they simply rely on the failure of the Respondent to consider the evidence submitted.
8. However, even if I were to find that the grounds of appeal were wide enough to include a challenge under s 84 (f), the provisions of paragraph 245AA confer a discretion upon the Respondent but the Respondent is not obliged to exercise it. Paragraph 245AA only requires the Respondent to request a document in the correct format if it appears that addressing the omission will result in a grant of leave. As noted by Mr Tarlow, there was no obvious reason to suppose that a birth certificate in the correct format would be available and therefore a request would not have been made.
9. I also note that paragraph 245AA requires any evidence that is requested to be sent to the Respondent within 7 working days of the request. If the Appellant was relying on paragraph 245AA, she is required not only to raise it but to supply evidence to the Judge that a birth certificate in the correct format was available to the Appellant and could have been sent within 7 days of a request. There is nothing before me to indicate that the Appellant provided any such evidence.
10. Furthermore, the birth certificate was not the only reason for refusal of the application. It was also refused because the Appellant did not send a letter of consent from her financial sponsor when she made her application. A letter of consent is a specified document. Paragraph 245AA does not require the Respondent to request a specified document that has not been submitted and is not required to request it where addressing the omission will not lead to a grant because the application will be refused for other reasons. The Appellant had not supplied a birth certificate in the correct format and there was no evidence to suggest that it was available in the correct format. Requesting a letter of consent would not therefore have resulted in a grant of leave. As to the Appellant's assertion that she did in fact supply the letter of consent, I find that the Judge gave adequate reasons for her finding that the Appellant's evidence in this regard was unreliable.
11. Against this background, the Judge made findings of fact that were open to her on the evidence before her at paragraphs [12] and [13]. The determination discloses no errors of law.

Decision

12. The determination of Judge Turquet contains no material errors of law. Her decision must therefore stand.

Anonymity

13. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and immigration Tribunal (Procedure) Rules 2005 and we see no reason why an order should be made pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date

Manjinder Robertson
Deputy Judge of the Upper Tribunal

4 November 2014

TO THE RESPONDENT
FEE AWARD

I have considered whether to make a fee award. I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011). As the Respondent's appeal has been dismissed, the decision of Judge Turquet as to the fee award shall also stand.

Signed

Dated:

M Robertson
Deputy Upper Tribunal Judge

4 November 2014