



**Upper Tribunal
(Immigration and Asylum Chamber)
VA/18805/2013**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 21 October 2014**

**Determination
Promulgated
On 28 October 2014**

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MISS MAHTA DOUSTKHAHVARI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr T Wilding, 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 levins on 12 September 2014 against the determination of First-tier Tribunal Judge Hague who had allowed the Respondent's appeal on Article 8 ECHR grounds against the refusal of her application for entry clearance as a visitor in a determination promulgated on 21 July 2014. The appeal was determined on the papers as the Respondent had requested.
2. The Respondent is a national of Iran, born on 21 September 1975, currently studying in Malaysia. She wished to visit the United Kingdom for the purpose of sitting a professional examination. The Entry Clearance Officer had refused her entry clearance application on the grounds in summary that (a) the source of her funds had not been sufficiently proved; (b) her right to remain in Malaysia as a student was in doubt; and (c) her intention to leave the United Kingdom at the end of her visit was in doubt. The Appellant's right of appeal was limited to human rights and Equality Act 2010 issues.
3. Permission to appeal to the Upper Tribunal as sought by the Appellant was granted because the judge had misapplied CDS (Points Based System: "available": Article 8) Brazil [2010] UKUT 00305 (IAC) (which applied to a student already in the United Kingdom) and had treated Article 8 ECHR as a general dispensing power, contrary to Patel v SSHD [2013] UKSC 72. The judge had not considered whether or not the Respondent's human rights were engaged.
4. Directions were issued by the Upper Tribunal in standard form. The Respondent was not represented at the hearing and had sent in no further material for the tribunal to consider. The tribunal considered that the onwards appeal could nevertheless be justly determined.

Submissions - error of law

5. Mr Wilding for the Appellant relied on the grounds and the grant of permission to appeal. The Respondent's human rights were simply not engaged on the facts and the determination was misconceived. Patel (above) applied.

The error of law finding

6. The tribunal agreed with Mr Wilding's submissions. The tribunal finds that the determination contains material errors of law, as identified in the grant of permission to appeal, such that it must be set aside and remade. The appeal to the Upper Tribunal is allowed.

The fresh decision

7. As noted above, the Respondent did not raise or pursue issues of race discrimination or human rights in her Notice of Appeal to the First-tier Tribunal. It is not easy to guess what they could possibly have been. The Respondent had no private life in the United Kingdom. No such point was "Robinson obvious": see R v the Secretary of State for the Home Department, ex p Robinson [1997] 3 WLR 1162. There is no human right to sit an examination in the United Kingdom. It was open to the Appellant to make a fresh entry clearance application addressing the issues raised by the Entry Clearance Officer when refusing her application. The First-Tier Tribunal's decision can only be remade in one way, that is, that the appeal against the Entry Clearance Officer's decision must be dismissed.

DECISION

The making of the previous decision involved the making of an error on a point of law. The appeal to the Upper Tribunal is allowed. The decision of First-tier Tribunal Judge Hague is set aside and remade as follows:

The appeal of the original Appellant is DISMISSED

Signed

Dated

**Deputy Upper Tribunal Judge Manuell 28 October
2014**

TO THE RESPONDENT
FEE AWARD

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

Signed

Dated

**Deputy Upper Tribunal Judge Manuell 28 October
2014**