Upper Tribunal
(Immigration and Asylum Chamber)

VB (Student - attendance and progress not equated) Jamaica [2011] UKUT 00119 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 2 December 2010	.....

Before

THE HON. MR JUSTICE KING
SENIOR IMMIGRATION JUDGE ALLEN

Between

VB

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: *Ms C Callinan*, instructed by Owoyele Dada & Co Solicitors
For the Respondent: Ms K Pal, Home Office Presenting Officer

In a student appeal, satisfactory progress cannot be assumed from a good record of attendance.

DETERMINATION AND REASONS

1. The appellant is a national of Jamaica. She appealed to an Immigration Judge against the Secretary of State's decision of 13 January 2010 refusing a further extension of stay in the United Kingdom as a student. The appellant said that when she applied on 26 February 2009 she was attending the London Computer Academy, doing a computing course. She received the refusal notice on 13 January 2010, in which she was informed the Secretary of State was not satisfied that the college was either a publicly funded institution of further or higher education maintaining satisfactory records of enrolment and attendance of students, a bona fide private education institution or an independent fee paying school outside the maintained sector maintaining satisfactory records of enrolment and attendance of students. The appellant enrolled at the South Chelsea College, on 1 February 2010, and this course was due to complete on 31 January 2012. She said that the college was on the register.

2. The Immigration Judge commented that the appellant had provided no evidence of her attendance or progress on the course nor any explanation for her sudden change in direction, and made reference to elements of the Tier 4 points-based system concerning the current course with no evidence being provided of the full Tier 4 requirements. She dismissed the appeal.

3. The appellant sought permission to appeal against this decision on the basis that the determination was inadequately reasoned and contained irrelevant references to the points-based system which had no relevance to this appeal as the application was made under the previous student rules. As the appellant had only just commenced her course after receiving the refusal letter she had not yet undertaken any assessments or examinations. The issue of the "sudden change of direction" raised by the Immigration Judge at paragraph 6 of the determination had not been raised at the hearing and the appellant had not been given the opportunity to address it.

4. A First-tier Tribunal Judge subsequently granted permission to appeal, referring among other things to the decision of the Court of Appeal in GO-O v Secretary of State for the Home Department [2008] EWCA Civ 747.

5. There was a hearing before a Senior Immigration Judge on 14 October 2010 at which it was directed that no later than fourteen days before the adjourned hearing both parties were to send to the Tribunal and each other up-to-date information and documentation to show the status and registration position of South Chelsea College, and that the appellant's representatives were to lodge and serve any evidence or documents on which they intended to rely including any new material, within 28 days of 12 October 2010.

6. The hearing before us took place on 2 December 2010.

7. Ms Callinan referred to the previous hearing at which she said that there had been an adjournment on the basis of two issues, firstly the South Chelsea College at the date of that hearing was not on the list of registered providers and also it was unclear whether the appellant had been attending and therefore there had been an adjournment with directions. The college had informed her that it was suspended. In March 2010 it was on the register and the appellant had attended 95% of classes between 1 February and 5 November 2010. As of 17 November the college was back on the register.

8. She also said that on the previous occasion it was conceded by the Secretary of State after argument that the appellant could change courses as she had done.

9. We were concerned to note that there appeared to be no record of that previous hearing or any concession or agreement made in the course of it on the file, but we accepted what was said by Ms Callinan especially since it was confirmed by Ms Pal from the notes on her file.

10. Ms Callinan therefore argued that it was the case that the college had to be shown to be on the register in March 2010 which was the date when the hearing before the Immigration Judge had taken place. The appellant had been enrolled by then. It was argued, therefore, that the requirements of the Rules were met.

11. Ms Pal agreed that there had been an issue whether the college was on the register and it was back on now, but there were other issues as to whether there was satisfactory evidence of regular attendance and satisfactory progress in the course including any examinations taken. Sub-paragraph (v) of paragraph 60 of HC 395 was therefore in issue.

12. Ms Callinan sought to argue that the appellant had not had any examinations and these would not take place until Spring 2011 and she could give evidence on that, and the further document that had been sent in by the college on 11 November 2010 showing the appellant's high degree of attendance and the dates of the course was sufficient to show satisfactory progress. In effect it was argued that the fact that the examinations were envisaged as taking place next Spring and she attended satisfactorily amounted to satisfactory progress.

13. We did not agree with this submission. It seemed to us clear that notions of attendance and progress could not be equated. We granted Ms Callinan on her application an adjournment to obtain evidence, if she could, of satisfactory progress on the part of the appellant in her course at the South Chelsea College.

14. Subsequently Ms Callinan was able to produce a document sent today by the Director of Studies at the college concerning the appellant, and stating that the appellant's class teacher, who was named, said that her class participation was totally acceptable in questioning and feedback, making individual presentations and in teamwork. Her application and concentration were said to be above average for the group. It was also said that she had taken tests in two of the three units of which the course consisted and had obtained 64% in unit 1 on 5 November and 58% in unit 2. Unit 3 was yet to be assessed, but in the opinion of the class tutor she would successfully pass this.

15. In light of this letter Ms Pal accepted that this amounted to good evidence of progress and did not intend to make any submissions contrary to that.

16. In the circumstances, given that evidence of satisfactory progress has now been provided, in addition to the college now being back on the register, we consider that the appellant has satisfied the relevant requirements of the Immigration Rules. Her appeal is accordingly allowed.

Signed

Senior Immigration Judge Allen,
Judge of the Upper Tribunal