



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

Appeal Numbers: IA/05413/2014
IA/05419/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 18th December 2014**

**Decision & Reasons
Promulgated
On 30th December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**MRS EVA SIMBILLO (FIRST APPELLANT)
MR RENATO SIMBILLO (SECOND APPELLANT)
(ANONYMITY NOT RETAINED)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Nasher

For the Respondent: Miss Holmes

DETERMINATION AND REASONS

Introduction

1. The first Appellant born on 5th April 1977 and the second Appellant born on 2nd August 1966 are both citizens of the Philippines and are married. The Appellants had made application to remain in the United Kingdom as a Tier 4 Student and dependant. The Respondent had refused that application

on 14th January 2014. The Appellants' appealed that decision and their appeal was heard by First-tier Tribunal Judge Oakley sitting at Hatton Cross on 3rd September 2014. He had allowed their appeals under the Immigration Rules.

2. The Respondent had made application to appeal that decision providing Grounds of Appeal and dated 11th September 2014.
3. Permission to appeal was granted by First-tier Tribunal Judge Chohan on 18th November 2014. Permission was granted on the basis that there may be substance in the Respondent's argument the Appellant had worked more hours than permitted, contrary to paragraph 245ZX(4) of the Immigration Rules.

Submissions on Behalf of the Respondent

4. Miss Holmes relied upon the Grounds of Appeal submitted and we discussed the documentation that was available to the Immigration Judge. I indicated I did not need to hear submissions on behalf of the Appellants from Mr Nasher and indicated that I found no error of law but would provide my decision with reasons. I now provide that decision.

Decision and Reasons

5. The Appellants had applied for leave to remain in the UK as a Tier 4 Student Migrant and a dependant on 23rd October 2013. The Respondent had refused that application on 13th January 2014. The refusal had been on one single ground namely the Respondent noted the Appellant had last been granted leave on 20th October 2011 as a student on condition code 3 which prohibited work. The first Appellant had been working and therefore the Respondent found her in breach of that condition and refused her application under paragraph 245ZX and her husband's application in line with the decision in respect of the first Appellant.
6. The First-tier Tribunal Judge had noted that it was accepted the Appellant had been working but that had been as part of her diploma and authorised by her Sponsor. He had been provided with three documents referred to at paragraphs 14 to 15 of his decision in support of that assertion. He further noted the Appellant was unsure whether she had sent the documents to the Respondent or indeed had a need to send such documents.
7. The Respondent's Grounds of Appeal against the First-tier Tribunal Judge's decision highlights a significant shift in the Respondent's position from the basis upon which the Respondent had initially refused the Appellant's application. The Grounds of Appeal to the Upper Tribunal criticised the First-tier Tribunal Judge for not deciding whether the first Appellant's accepted hours of work exceeded half of the total length of course undertaken and stated the judge failed to engage with the Immigration Rules.

8. Those Grounds of Appeal as set out implicitly therefore accept the Appellant was entitled to work and the question was whether she worked longer hours than permitted in terms of the course length. That is a significant shift from the Respondent's original basis of refusal that the Appellant was not permitted to work at all. That raises some concerns as to the consistency and level of information held by the Respondent.
9. The documents placed before the judge are of assistance and helped him reach the decision that he did. The Appellant had enrolled on EDEXCEL level 5 diploma in leadership, health and social care on a course lasting from 26th September 2011 until June or July 2013. The programme of study was with Cahro Academy. The first document before the judge was a letter from the managing director of Cahro dated 24th November 2011. That letter confirmed the Appellant was a student with them, provided their Sponsor licence number and the fact that they held highly trusted status with UKBA. The letter noted her current visa condition and current regulations and noted she must not exceed more than fifteen hours per week work placement during term time which formed part of her course. Further she was entitled to work unrestricted hours as requested during holiday times.
10. The second document is a work placement agreement dated 2nd November 2011 signed by Cahro and Fitzwilliam House. The agreement notes that students cannot exceed 25 hours per week (fifteen hours work placement and ten hours work) during term time and can work unrestricted hours during holidays.
11. The third document is a work placement agreement dated 3 Sep 2012 between the same parties and notes that the student is entitled to work 30 hours weekly during term time but if they miss schooling then they must work less hours to keep the equilibrium of work/schooling in balance. The agreement further states that the student can work unrestricted hours during holidays.
12. The judge found that those documents revealed that the Appellant had not breached the agreements and conditions of her visa as set by her Sponsor by the accepted hours of work she undertook.
13. Cahro is a highly trusted Sponsor with the Home Office. As such it acts essentially as a contractor or agent for the Home Office and it would be expected there would be communication and consistency between those bodies. The shift in the Respondent's Grounds of Appeal suggest they accept her entitlement to work which is consistent with the diploma and agreements in place with their highly trusted agent namely Cahro. Indeed the work forms an essential part of the diploma, understandable given the nature of the diploma itself. It also suggests the original refusal of her application was based on a misunderstood premise.
14. The judge was entitled to conclude that the Appellant's accepted work levels did not breach her visa conditions or the work placement

agreements with her Sponsor college. It does not seem to me that there was any onus necessarily on the Appellant to forward copies of such documents even if she had access to them to the Home Office. It should be expected that such documentation relating to visa conditions and student's work placement agreements would be passed by the highly trusted Sponsor, college or company to the Home Office or alternatively the Home Office as a matter of routine would seek such documents to ensure they had an accurate and up-to-date database of students and their conditions within the UK to maintain an efficient immigration control.

15. The Appellant had leave to remain on her visa until 28th October 2013 and prior to that date had applied for a further higher level course for which she was awaiting a decision, namely the application in question. Any work she may have done post June or July 2013 until November 2013 was done in holiday times and in accordance with the conditions of her work placement and whilst awaiting a decision from the Home Office in respect of her application to remain in the UK as a student continuing her course of study and chosen subject but at a higher level.
16. The judge was entitled to find in favour of the Appellant in this case having seen the documentation available. It is perhaps a little regrettable that the not insignificant shift in the Respondent's position between the refusal letter and the Grounds of Appeal to the Upper Tribunal may demonstrate a less than full or up-to-date picture of circumstances which may reflect potentially a breakdown of communication between themselves and their highly trusted Sponsor agent or some other fault. However the Appellant has acted at all times within the terms and spirit of her course of study and work placement and the judge was entitled to allow her appeal under the Immigration Rules.

Notice of Decision

There was no material error of law made by the judge in this case and I uphold the decision of the First-tier Tribunal.

No anonymity direction is made.

Signed

Date **30th December 2014**

Deputy Upper Tribunal Judge Lever