Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/05614/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 16 December 2014	**On 12 January 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS RIVA AKTER

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer
For the Respondent: Mr M M Islam, Authorised Representative (London Law Associates)

DETERMINATION AND REASONS

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge Mark Davies on 4 November 2014 against the determination of First-tier

Tribunal Judge Dineen who had allowed the Respondent's appeal against the Secretary of State's decision dated 20 January 2014 in a determination promulgated on 19 September 2014. The Respondent is a national of Bangladesh, who had applied for further leave to remain as a Tier 4 (General) Student Migrant, which was refused on the grounds that although the Appellant had submitted a valid CAS, she had not shown that she satisfied the maintenance requirement. The Respondent had relied on access to a fixed deposit account held in her mother's name. The Secretary of State had not accepted that such funds could be considered as funds available or under the Appellant's own control during the prescribed 28 period. The application was refused under paragraph 245ZX(d) of the Immigration Rules. The reasons for refusal letter conveying the decision to refuse to vary the Respondent's existing leave incorporated a second decision to remove the Respondent by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. Judge Davies considered it arguable that Judge Dineen should not have concluded that the funds relied on by the Respondent satisfied the requirements of the Immigration Rules. The judge had accepted into evidence a letter dated 2 March 2014 which had not been submitted with the visa application, contrary to section 85A(4) of the Nationality, Immigration and Asylum Act 2002. In any event the funds relied on were not cash funds: Appendix C, paragraph 1A(j) of the Immigration Rules.

3. Mr Tufan for the Appellant relied on the onwards grounds and the grant of permission to appeal. He submitted that it was, as the First-tier Tribunal Judge had observed, a narrow point. The judge had not explained with sufficient reasons why he considered that the Respondent had complied with the Immigration Rules. The post application letter from the bank should not have been admitted. The determination was defective and should be set aside.

4. Mr Islam for the Respondent submitted that the determination was correct. The bank letter dated 2 March 2014 concerning the deposit account to which the judge had referred was not new, but merely reinforced what was obvious, namely that access to the deposit account was possible at any time without notice. The only penalty would be reduced interest. That was in accordance with

ordinary banking principles. The relevant Home Office Guidance, policy version 10/2013, paragraph 177 states:

"The evidence of money that you can use must be of cash funds in the bank (this includes savings accounts and current accounts even when notice must be given), as a loan letter or official financial or government sponsorship available to you. Other accounts or financial instruments such as shares, bonds, overdrafts, credit cards and pension funds are not acceptable, regardless of notice period."

This paragraph had not been mentioned in the judge's determination but had been included in the Respondent's bundle produced for the hearing and had not been in dispute. There was accordingly no material error of law and section 85A was irrelevant.

5. In reply Mr Tufan accepted that the relevant Home Office guidance was in force at the material time.

6. At the conclusion of submissions the tribunal indicated that it found that the judge had not fallen into material error of law. The determination was succinct, prepared by a very experienced judge. There is no doubt that the relevant Home Office guidance was in force and that the judge had been directed to it. The Upper Tribunal has seen the bundle which was before him. The letter from the bank dated 2 March 2014 merely reinforced the Respondent's existing case and the mention of it in the determination was immaterial.

7. With the wisdom which hindsight can provide, it might perhaps have been helpful had the judge referred to paragraph 177 of the guidance (cited above), but no doubt the point had been perfectly obvious to the parties present at the hearing. Unfortunately it had not been so obvious when the Home Office sought to make a routine challenge to an allowed appeal, a practice which really ought to be undertaken with far more circumspection. The Upper Tribunal understands that applications are often made on behalf of the Secretary of State without access to the original appeal file. The present appeal shows why such a practice is bad one.

8. The tribunal should not interfere with a properly reasoned determination of a First-tier Tribunal judge unless there is a

clear and material error of law. Paragraph 177 of the Home Office guidance simply reflected normal banking practice, of which the judge was well aware. It was thus obvious that the Respondent had relied on cash funds to which she had lawful access when she made her visa application: see [8] and [12] of the determination. The judge was right to find that the Respondent met the Immigration Rules.

9. The Secretary of State's appeal is accordingly dismissed.

DECISION

The making of the previous decision did not involve the making of an error on a point of law. The determination stands unchanged

Signed **Dated 09/01/2015**

Deputy Upper Tribunal Judge Manuell