

**Asylum and Immigration Tribunal**

**Appeal Number: IA/06638/2009**

**THE IMMIGRATION ACTS**

**Heard at Hatton Cross  
On 16<sup>th</sup> April 2009  
Prepared 16<sup>th</sup> April 2009**

**Determination Promulgated  
..... 2.0.MAY.2009...**

**Before**

**IMMIGRATION JUDGE KANAGARATNAM**

**Between**

**and**

**Appellant**

**Respondent**

**Representation:**

For the Appellant:  
For the Respondent: Mr N Macrae

Of Counsel  
Home Office Presenting Officer

**DETERMINATION AND REASONS**

1.The appellant , a Venezuelan national born on the 1978 appeals against a decision made on 10<sup>th</sup> February 2009 by the Secretary of State refusing him leave to remain in the United Kingdom as a post study work migrant under paragraph 245Z of the Immigration Rules HC 395 (as amended).I hereby amend the error contained in my previous determination under the provisions of the slip rule 60 of the Asylum and Immigration Tribunal(Procedure)Rules2005.



2. The Secretary of State having considered the application of the appellant refused it on the basis that the appellant failed to demonstrate that she had a sum of £800.00 in his account on any one day during the month prior to the application. The application was refused on the paragraph 245Z(e).

3. **Documents**

I have before me a bundle of documents consisting of the Notice of Appeal and its annexure, which includes a letter of refusal and the grounds of appeal. There are also copies of the original application, copies of the passport, an explanatory letter and a copy of the CADIVI document.

I also have an appellant's bundle of documents consisting of appellant's witness statement, copies of passport, refusal letter, certified translation of CADIVI and letters from the NatWest bank.

4. **Proceedings**

At the hearing the appellant was presented and after having confirmed her name and address gave evidence in English and adopted her statement dated 6<sup>th</sup> April 2009 in pages 9 to 15 of the appellant's bundle of documents. She had come to the United Kingdom as a student after having first graduated in sociology in Venezuela. She obtained a masters degree in the University of London and subsequently sought employment at the University of London at a research capacity. Her application to remain as a Post-Study Work migrant was refused as it was believed that she had not had £800 in her account during the relevant period. She had however explained the position when making the application in a detailed letter. She had also submitted a copy of the CADIVI document which explained the special procedure for the administration of foreign exchange authorisation to students from Venezuela who wished to receive funds abroad. The procedure was expensive and time consuming as her request to receive monies abroad had to be processed through the regulatory system imposed by the Venezuelan government. She had to prove her student status along with letters from the university and justify the release of funds in a periodic nature. There was also a limit on the frequency of which she was allowed to transfer funds despite these difficulties she had at all times made requests in order to meet her obligations. She referred to the explanatory letter in page 32 of the respondent's bundle of documents, her NatWest bank statements for the relevant months and the fluctuations in the bank statements during the relevant period. By tying up the bank statements to her application for funds and the operation of the CADIVI document she had made applications in the first second and third relevant period as shown on the documents after having registered only once as required by the CADIVI rules. She had made the application in July 2008 as shown in pages 53 to 55 of the Natwest documents and thereafter made her second application in December 2008 when she received the second tranche of funds on the 12<sup>th</sup> February 2009. This sum of funds which was \$5400 was available to her from the time it was available to her in



her Venezuelan bank although she was informed that it had reached her United Kingdom account on the 12<sup>th</sup> February 2009.

She had made her application to the Home Office on the 28<sup>th</sup> December 2008 having previously made an application for authorisation in Venezuela, she there afterwards referred to articles 6 of the CADIVI as shown on pages 35 and 36 referring to the fact that prior authorisations had been obtained and that the funds should be used for the purposes authorised, which in her case were educational and maintenance purposes.

Cross examined she said she had held money in her bank account 3 months prior to the application. She had also said that her parent's deposit funds in her account in Venezuela from where it was transferred to her account in the United Kingdom.

I ask the appellant which bank she banked with in Venezuela and she said that she had her bank account at the Mercantile bank. She also confirmed that her parent's deposit money in the Mercantile bank for her use.

## **Rules**

5. The requirements to be met by a person seeking leave to enter the United Kingdom state that to qualify for leave to remain as a Tier 1 (Post-Study Work) Migrants state that

(a) The applicant must not fall for refusal under the general grounds for refusal, and must not be an illegal entrant.

(b) The applicant must not previously have been granted entry clearance or leave to remain as a Tier 1 (Post-Study Work) migrant.

(c) The applicant must have a minimum of 75 points under paragraphs 51 to 58 of Appendix A.

(d) The applicant must have a minimum of 10 points under paragraphs 1 to 3 of Appendix B.

(e) The applicant must have a minimum of 10 points under paragraphs 1 to 2 of Appendix C.

(f) The applicant must have, or have last been granted, entry clearance, leave to enter or leave to remain:

(i) as a Participant in the Fresh Talent: Working in Scotland Scheme,

(ii) as a Participant in the International Graduates Scheme (or its predecessor, the Science and Engineering Graduates Scheme),



(iii) as a Student,

(iv) as a Student Nurse,

(v) as a Student Re-Sitting an Examination, or

(vi) as a Student Writing Up a Thesis.

(g) An applicant who has, or was last granted leave as a Participant in the Fresh Talent: Working in Scotland Scheme must be a British National (Overseas), British overseas territories citizen, British Overseas citizen, British protected person or a British subject as defined in the British Nationality Act 1981.

(h) If:

(i) the studies that led to the qualification for which the applicant obtains points under paragraphs 51 to 58 of Appendix A were sponsored by a Government or international scholarship agency, and

(ii) those studies came to an end 12 months ago or less the applicant must provide the unconditional written consent of the sponsoring Government or agency to the application and must provide the specified documents to show that this requirement has been met.

### **Findings of fact and credibility**

6. The burden of proof is on the appellant and the standard of proof is on the balance of probabilities. In this instance the appellant will have to show that the combined sum of the funds on a day in the 3 months preceding the 28<sup>th</sup> December 2008 would be £800. Having heard the evidence of the appellant and having considered the documents that the appellant has produced in conjunction with her oral evidence, I find that the appellant made the relevant application on the 28<sup>th</sup> December 2008. The first relevant month relating to her application is contained in D9 to D12 of the respondent's bundle of documents. The second relevant month for the period are shown on page 12 and pages 5 to 8 of the respondent's bundle of documents and has fluctuated to below the required level. While the third relevant period has shown in documents D1 to D4 a balance higher than the required amount. I now consider the appellant's explanatory statement at respondent's D19 along with the CADIVI document which explains the exchange control scheme. I note that the central bank of Venezuela operates a foreign exchange control mechanism which has been clearly explained in the CADIVI document. I however note that the appellant's United Kingdom bank has confirmed on the 12<sup>th</sup> February 2009 that they have received a sum of \$5400 as shown on page 56 of the appellant's bundle of document. I observe that the NatWest bank confirms in this document that they have received the money from the mercantile bank in accordance with the CADIVI. The lower part of the page shows that the account has been maintained by the appellant and I am able to accept



that this in accordance with the appellant's evidence. On the basis of this evidence I note that there have been funds in the appellant's NatWest bank account during the relevant period except during a period which it dropped to £739. I would now have to consider whether the funds in the appellant's Mercantile bank account at the time can be taken into consideration. Having considered the CADIVI document I am satisfied from articles 6 and 8 of the documents that requests have to be made for the transfer of funds in advance, and that they have to be made for a given purpose. I am also satisfied that they can be made only by the appellant and are transferable from her account in Venezuela to the United Kingdom. I am able to accept that the appellant made the application for the transfer before her application to the home office and have seen the original NatWest bank statement confirming the arrival of the funds in the United Kingdom on the 12<sup>th</sup> February 2009. I now consider whether it is possible to accept funds in the appellant's foreign bank account for the purposes of establishing the fact that she had over a sum £800 in her account. In this context I examine the policy guidance issued by the United Kingdom border agency for Post-Study Work migrants in the Tier 1 category and consider in particular section 96.4 which states that a letter from a financial institution regulated by the financial services authority or in the case of overseas account the home regulatory (the official regulatory body of the country in which the institution of rates and the funds are located) confirming the funds. While the rules are mandatory that the appellant should have £800 for the preceding 3 months, it is the appellant's position that she had had access to the funds which were in the Mercantile bank account operated by her but were awaiting to be transferred by the CADIVI process. On considering the documents she has produced in order to establish this position I am satisfied that she has had the money in her Mercantile bank account from her acknowledged produced subsequently by the NatWest bank. As to the exact nature of the proof that she has submitted to establish this position she has provided supplementary supporting documents and the explanatory letter. I now consider paragraph 85 (4) 2002 Immigration and Asylum Act and accept that it is able to consider evidence about matters arising and relevant to the decision including evidence that concerns a matter arising after the date of the decision. On the basis of the evidence before me it is now clear that this appellant had funds in the overseas account in her Mercantile bank. I also find that the guidelines make it possible to accept evidence of funds in an overseas bank account. In this instance the appellant has provided evidence relating to her bank account bearing her name and information, pointing to the fact that the funds were contained in her bank account. I am able to accept such post decision evidence relevant to the dates prior to the application made by the appellant in accordance with these provisions. I am therefore able to accept that this appellant held a sum of over £800 in her combined accounts in the Natwest bank in the United Kingdom and the Mercantile bank account in Venezuela and that they were accessible to her although they were awaiting a transfer through the CADIVI system. I find that the requirements of the relevant paragraph are met.

**Decision**

7. Appeal Allowed



Signed: R.I KanagaRatnam

Date 19/05/09

Immigration Judge Kanagaratnam

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**Decision**

7. Appeal Allowed



Signed: R.I KanagaRatnam

Date 19/05/09

Immigration Judge Kanagaratnam

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