



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

DN (student - course 'completed' - established presence) Kenya [2010] UKUT 443 (IAC)

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Determination Promulgated**

**On 9 November 2010**

.....

**Before**

**Senior Immigration Judge McKee**

Between

**DN**

Appellant

and

**Secretary of State for the Home Department**

Respondent

In order to show only two months' worth of 'Maintenance' under Appendix C, rather than being required to show nine months' worth, a student must have been studying on a course within the last four months, and that course must itself have lasted for more than six months. The course may still be continuing, but if it came to an end within the last four months, and the student is embarking on another course (or repeating the same course), it matters not whether he was successful on the previous course. Appendix C requires the course to have been 'completed' no more than four months before, but that should not be taken to mean 'successfully completed'. The notion of 'established presence' for Maintenance purposes requires presence as a student, not success as a student.

**DETERMINATION and REASONS**

1. On 30 December 2009 the appellant applied for further leave to remain as a Tier 4 Migrant, based upon his acceptance on a course commencing at Alpha Meridian Colleges on 1<sup>st</sup> February 2010. His course fees had been paid in full, but he also needed to satisfy the requirements of Appendix C to the Immigration Rules for 'Maintenance'. For this, £600 per month was required, either for a two-month period or for a nine-month period. It would be two months if - according to paragraph 11 of Appendix C as it was at that time - he was applying to extend leave previously granted as a student and " the previous study was completed within the previous four months ." However, if he was seeking an extension of stay " following completion of a course of study of less than six months ", he would have to have available to him maintenance for nine months, i.e. £5,400.

2. The UK Border Agency attempted to contact the appellant at the e-mail address and then at the correspondence address which he had given on his Tier 4 (General) Application Form, but received no reply. The appellant's previous education provider, Greenwich London College, had notified the Agency that the appellant had not been attending classes, and so they wanted evidence that he had completed his previous course. In the absence of such evidence, the Agency required the appellant to have £5,400 in the bank at the time when he applied on 30<sup>th</sup> December 2009, but the balance in his account on that date was only £3,231.

3. The application was therefore refused on 'Maintenance' grounds, and the appellant having requested that his appeal be determined 'on the papers', Immigration Judge Doran considered the matter on 23 June 2010. He took the view that, having failed two of the papers set by the Institute for the Management of Information Systems ('IMIS'), for whose examinations he was studying at Greenwich London College, the appellant had not 'completed' his course there in the sense required by Appendix C. That meant that he had to have available to him when he applied for further leave enough maintenance for nine months (£5,400) rather than two months (£1,200), and as he only had £3,231 in his Halifax account at that time, the appeal was dismissed.

4. In his application for permission to appeal to the Upper Tribunal, the appellant protested that the judge had not taken into consideration the fact that he had provided an additional bank statement dated 21<sup>st</sup> April 2010, showing a balance of £5,890. As explained in *Pankina*, evidence that he had sufficient funds after he applied for further leave would not avail an appellant if he did not have sufficient funds before he applied. This, with respect, was overlooked by the senior immigration judge who granted permission. She was concerned instead with the fact the First-tier Tribunal had consulted the Policy Guidance when determining whether maintenance had to be available for two months or nine months. But this was not in fact a *Pankina* scenario, in which the Policy Guidance was laying down requirements which were not in the Immigration Rules. The stipulations about two months and nine months were in the Rules, as well as in the Guidance.

5. Further to the grant of permission, the senior immigration judge gave directions on 9<sup>th</sup> September to the effect that, if an error of law was established, the Upper Tribunal would be able to re-make the decision if it could hear oral evidence from the appellant. Nevertheless, the appellant did not attend today's hearing. The respondent was represented by Mr John Parkinson of the Specialist Appeals Team, and he contended before me that IJ Doran had been quite right to regard the appellant as not having 'completed' his previous course of study at Greenwich London College.

6. I was not so sure. The decision under appeal was made on 7 April 2010, and it so happens that on the previous day HC 439 amended Appendix C so as to introduce the notion of "an established presence studying in the United Kingdom." A student who has such a presence will need to show maintenance for only two months, but without such a presence he will need maintenance for nine months. A new paragraph 14 of Appendix C defines 'an established presence'.

"14. An applicant will have an established presence studying in the United Kingdom if the applicant has completed a course that was at least six months long within their last period of leave as a Tier 4 migrant, a student or as a Postgraduate Doctor or Dentist, and this course finished within the last four months, or the applicant is applying for continued study on a course where the applicant has completed at least six months of that course and has been studying within the last four months."

7. It seems to me that on the first occurrence of 'completed' in that paragraph, it could be taken to mean successful completion, in the sense of having passed any requisite examinations and having obtained the desired qualification. On the other hand, on its second occurrence 'completed' simply

means having been on a course for the requisite period of six months, with more of that course still to follow. The student will not in that scenario have passed all his exams and obtained the desired qualification.

8. If the course has come to an end, and the student has not obtained the qualification which the course was leading towards, he will be penalized financially, on the interpretation favoured by Mr Parkinson, if he wants to repeat the course, or try another course, by having to show nine months' worth of funds. A successful student will, on the other hand, only have to show two months' worth of funds if he wishes to proceed to another course. But that does not seem to me to be the intention behind the idea of 'an established presence studying in the United Kingdom'. It is the studying, rather than the success, which establishes a presence.

9. If that is the correct interpretation, it does not benefit the appellant. The facts of his case are that his previous course of study at Greenwich London College lasted for less than six months, i.e. from 1 April to 31 August 2009, while a gap of longer than four months separated the end of that course from the commencement of his present course at Alpha Meridian Colleges on 1<sup>st</sup> February 2010. So he needed to have £5,400 for maintenance at the time when he applied, quite apart from the respondent's concerns about whether he had actually been attending Greenwich London College.

10. Immigration Judge Doran was accordingly right to conclude that the appellant needed £5,400, even if he was wrong to think that 'completed' meant 'successfully completed'. If he made an error, it was not material to the outcome.

#### **DECISION**

11. The appeal is dismissed.

Signed Date

Senior Immigration Judge McKee

Judge of the Upper Tribunal