



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

Appeal Number: IA/02049/2013

THE IMMIGRATION ACTS

Heard at Field House

On 30 October 2013

Determination

Promulgated

On 4 December 2013

Before

**MR JUSTICE CRANSTON
UPPER TRIBUNAL JUDGE KING TD**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR HASITHA JEEWAKA BANDARA REKOGAMA MUDIYANSELAGE

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Ms Helen Horsley, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against a decision of Judge Owens sitting in the First-tier Tribunal. The judge had allowed an appeal by the respondent, who is from Sri Lanka. He

was a Tier 4 Student whose applications for an extension of leave had been refused. The appeal raises an issue as to the meaning of “academic progress” in paragraph 245ZX of the Immigration Rules.

2. The background is straightforward. On 2 July 2010 the respondent entered the United Kingdom with leave to remain until 25 May 2012 as a Tier 4 Student. That was to study for a certificate for the Chartered Institute of Management Accounts (CIMA) at Kaplan College. The leave was granted on the basis that he would undertake a level 6 course. His intention was to return to work in his father’s business in Sri Lanka once he had completed the course. He had been granted a confirmed acceptance status, a CAS, by Kaplan College. Under the Immigration Rules Kaplan College was his sponsor.
3. It was found by the judge that the CIMA involved study at three levels, at level four, five and six. The respondent commenced study at level 4, enrolled for level 5 examinations but did not complete levels five and six. Kaplan College suspended his sponsorship for poor attendance. His explanation was that that was attributable to travel problems. He requested that his sponsorship be reinstated but that was refused. The respondent’s leave was to expire on 27 May 2012. On 23 May he applied to extend his leave to remain as a Tier 4 Student to take an Advanced Diploma in Business Management at Essex College. He claimed 30 points under Appendix A of the Immigration Rules for those studies. That course is a level five course. The college accepted him and confirmed the position in the CAS that it represented academic progress.
4. On 7 July 2013 the Secretary of State refused to vary the respondent’s leave since the Secretary of State was not satisfied that his Tier 4 sponsor had confirmed that the course for which his CAS had been assigned represented academic progress from his previous study or met one of the exemptions:

“Your CAS states that you intend to study an Advanced Diploma in Business Management course at NQF/QCF level 5, but you were previously issued leave to study on a CIMA course at NQF/QCF level 6. As you are intending to study a course at a lower level than the course you were previously issued leave to study, your course does not represent academic progression from your previous studies.”
5. The respondent appealed to the First-tier Tribunal on the basis that the Secretary of State had got her facts wrong. The CIMA examination he had enrolled to study was level 5 and he had to complete a comparable course before he could progress to level 6.
6. At the hearing the respondent was unrepresented.
7. In the determination and reasons the judge set out the background as we have just summarised it. He records that both parties made submissions.

For the Secretary of State it was submitted that there was no evidence of academic progress since the previous leave was for the respondent to study at level 6. The judge concluded that the respondent was a credible witness. He then found that when the CAS referred to level 6 it referred to the final level of the CIMA course and not the actual level completed. As the CAS confirmed, the respondent had not completed level 6. The new course was level 5 and involved further study at level 6. In the CAS the sponsor had confirmed that it would involve complementary study in that it would assist the respondent to learn the fundamentals of business management. The sponsor was aware of the respondent's previous academic history and had certified that it represented progress for the respondent's previous study. The Secretary of State's decision was not in accordance with paragraph 245ZX(c) of the Immigration Rules and he allowed the appeal.

8. The relevant part of paragraph 120A of Appendix A relating to Rule 245ZX is as follows.

“(b) For a course to represent academic progress from previous study, the course must:

- (i) be above the level of the previous course for which the applicant was granted leave as a Tier 4 (General) Student or as a Student, or
- (ii) involve further study at the same level, which the Tier 4 Sponsor confirms as complementing the previous course for which the applicant was granted leave as a Tier 4 (General) Student or as a Student.”

9. In **Naeem [2013] UKUT 00465 (IAC)** Mr Ockleton, Vice President, and Upper Tribunal Judge Martin examined the meaning of that Rule and said this at paragraph 10:

“The question is not the actual level of his previous studies, but the level ‘of the previous course for which the applicant was granted leave as a Tier 4 General Student’. Although it appears that the appellant only completed level 4, it is clear that he was in April 2009 granted leave in respect of a three year course comprising levels 4, 5 and 6. In fact he did not complete level 4 until January 2012 by which time the college had discontinued the course structure under which the appellant had originally enrolled. His new enrolment was for level 5.

... It follows that the appellant's new course did not meet the requirements of paragraph 120A of Appendix and he was therefore entitled to no points for the Confirmation of Acceptance for Studies.”

10. Unfortunately that authority was not before the judge in deciding this case. In our view it is a complete answer to the point. The Secretary of State's appeal must be allowed.
11. We therefore set aside the judgment. We remake that decision and dismiss the respondent's appeal.

Signed

Date

Mr Justice Cranston