Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/00510/2014
IA/00521/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 28th July 2014	**On 1st September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR MAZHAR HUSSAIN, FIRST APPELLANT
MRS PARVEEN AKHTER, SECOND APPELLANT
(NO ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms H Aspinall, Counsel
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellants are citizens of Pakistan born respectively on 5th September 1979 and 6th September 1985. The first Appellant on 28th October 2013 made a combined application for leave to remain in the United Kingdom as

a Tier 4 (General) Student Migrant under the points-based system and for a biometric residence permit. On the same date the second Appellant made an application for leave to remain as a dependent partner of the first Appellant. Their applications were refused by the Secretary of State by Notices of Refusal dated 5th December 2013.

2. The Appellants appealed and the appeals came before Judge of the First-tier Tribunal Fox hearing the appeals on the papers at Glasgow on 13th March 2014. In a determination promulgated on 18th March 2014 the Appellants' appeals were dismissed.

3. On 24th March 2014 the Appellants lodged Grounds of Appeal to the Upper Tribunal. Those grounds contended:-

(i) that the Immigration Judge had failed to properly consider material which was before him;

(ii) that the conclusions of the Immigration Judge were insufficiently reasoned insofar as they did not take into account the private life established by the Appellants; and

(iii) that the Immigration Judge had failed to give proper consideration to the Appellants' personal circumstances in the UK insofar as failing to consider those circumstances at the date of hearing.

4. On 25th April 2014 Judge of the First-tier Tribunal Hollingworth granted permission to appeal. In granting permission he noted that in relation to Article 8 there is an absence of analysis in relation to education as an aspect of the first Appellant's private life.

5. A Rule 24 response was served by the Secretary of State on 17th June 2014. It is on that basis that the appeal comes before me. The Appellants are represented by their instructed Counsel Ms Aspinall. The Secretary of State is represented by her Home Office Presenting Officer Mr Diwnycz.

Submissions/Discussions

6. Ms Aspinall takes me to her skeleton argument pointing out that the Appellants' immigration history and in particular the first Appellant's academic history is set out in considerable detail in the Notice of Refusal. The fact remains that the first Appellant was granted leave to enter the United Kingdom as a student on 11th September 2004 and that leave has been extended five subsequent times prior to the subject matter of the present appeal. As to the colleges the Appellant has attended I am referred to paragraphs 5 and 6 of Ms Aspinall's skeleton. She submits that the First-tier Tribunal Judge erred in his consideration of the Appellant's appeal and in his interpretation of the Immigration Rules in particular paragraph 245ZX(ha). Paragraph 245ZX(ha) of the Immigration Rules states as follows:-

"If the course is at degree level or above, the grant of leave to remain the applicant is seeking must not lead to the applicant having spent more than 5 years in the UK as a Tier 4 (General) Migrant, or as a Student, studying courses at degree level or above unless:

(i) the applicant has successfully completed a course at degree level in the UK of a minimum duration of 4 academic years, and will follow a course of study at Master's degree level sponsored by a Sponsor that is a Recognised Body or a body in receipt of public funding as a higher education institution from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Scottish Funding Council, and the grant of leave to remain must not lead to the applicant having spent more than 6 years in the UK as a Tier 4 (General) Migrant, or as a Student, studying courses at degree level or above."

7. Ms Aspinall refers me to the authority of *Mirza (ACCA Fundamental level qualification – not a recognised degree) [2013] UKUT 00041 (IAC)* which is authority for stating that the ACCA does not have degree awarding powers and the qualifications which it awards are not UK recognised degrees. This approach was endorsed by the High Court in *Syed [2013]* and by the Court of Appeal in *Syed [2014].* She submits the Appellant has consequently not spent five years on a degree course and that the Appellant therefore meets the Immigration Rule.

8. I am considerably assisted in this matter by the acceptance of Ms Aspinall's submissions by Mr Diwnycz. He concedes that the First-tier Tribunal Judge made a material error of law in his determination and that the appeal should be allowed.

The Law

9. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial consideration, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which

was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

11. Firstly it is clear that there is for all the above reasons a material error of law in the determination of the First-tier Tribunal. I thus set aside that determination and proceed to remake the decision. It is further clear in the light of the authorities that an ACCA qualification is not a UK recognised degree. In the present case, the first Appellant has only ever studied ACCA courses during his time in the United Kingdom with the exception of the present global MBA and finance and business training course. In accordance with the authorities such courses are not UK recognised degrees and accordingly, the first Appellant has not spent more than five years studying at degree level or above for the purposes of paragraph 245ZX(ha). In such circumstances the first Appellant satisfies the requirements of the Immigration Rules and the Secretary of State was wrong to refuse his application.

12. I also note, having spoken to the first Appellant, that he needs the current extension of his visa in order for him to be awarded his degree under the new Rules in particular paragraph 245(zy). I therefore allow the appeal (with the consent of Mr Diwnycz) to 18th October 2014.

Decision

The decision of the First-tier Tribunal contained a material error of law. The decision is set aside and on hearing submissions the decision is remade allowing both Appellants' appeals under the Immigration Rules.

The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of The Asylum and Immigration Tribunal (Procedure) Rules 2005. No application is made to vary that order and none is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris