



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

Appeal Number: IA/08253/2013

THE IMMIGRATION ACTS

Heard at Field House

On 27th June 2014

**Determination
Promulgated**

On 15th August 2014

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MR PRAKASH CHUMBOO

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Khan, Solicitor of Universal Solicitors

For the Respondent: Miss Pettersen, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant was born on 28th April 1988 and is a citizen of Mauritius. He arrived in the United Kingdom as a student on 23rd August 2010 with leave valid until 14th December 2012. On 13th December 2012 he applied for

leave to remain as a Tier 4 (General) Student Migrant under the points-based system.

2. On 27th February 2013 the respondent refused the application under paragraph 245ZX(c) with reference to paragraph 120A of Appendix A of the Immigration Rules, finding that the appellant did not meet the requirements to be awarded points for his Confirmation of Acceptance for Studies.
3. The decision under Section 47 of the 2006 Act was subsequently withdrawn prior to hearing.
4. The appellant sought to appeal against that decision which appeal came before First-tier Tribunal Judge Scott on 25th September 2013. The appeal was dismissed.
5. The appellant sought to appeal against that decision. Permission to appeal was granted in the light of the decision of the Court of Appeal in **Pokhriyal v Secretary of State for the Home Department [2013] EWCA Civ 1568**. The matter came before me in pursuance of that grant of leave.
6. The appellant came to the United Kingdom to study the three year ACCA course at LSBF. Although he was a bona fide student and attended his classes when he sat his examinations in October 2012 he was unsuccessful.
7. It was his decision, upon advice, that he would be more suited to a different course of study namely that of tourism and hospitality. He was accepted to study for a qualification in professional tourism and hospitality by Kiara College. A CAS was duly issued and on that basis he put in his application for leave to remain. Since then that college has closed down.
8. He has now obtained a conditional offer dated 10th September 2012 from Gemal College to study for a BTech NHC Diploma in Hospitality Management also at QCF/NQF level 4. That offer was conditional upon the success of the appeal upon which the CAS will be assigned to him.
9. As the Judge recognised the basis of the appeal was however the nature of the CAS from Kiara College.
10. The relevant matter as set out in the CAS is as follows:-

“Progression Details

Is current course higher, lower or the same level as the previous course? Same. If same or lower supply justification text student first attempt was unsuccessful. Student has covered some of the modules

for which he is now prepared to study tourism and hospitality management. Student final attempt this year.”

11. The refusal letter of 27th February 2013 indicated that the Secretary of State was not satisfied that the Tier 4 sponsor had confirmed that the course for which the CAS had been assigned represented academic progression from the previous studies defined or met one of the exemptions.

12. There was an inaccuracy in that decision in that the decision further went on to say as follows:-

“As you are intending to study a course at a lower level to the course you were previously issued leave to study, your course does not represent academic progression from your previous studies.”

In fact it was accepted at hearing that such was factually incorrect because the two courses were at the same level.

13. The Judge noted that matter at paragraph 14 of the determination but considered that that simply shifted the focus from paragraph 120A(b)(i) to paragraph 120A(b)(ii), so as to express the requirement that the appellant still had to show that the course for which the CAS was assigned represented academic progress from previous study or complemented the previous course for which the appellant was granted leave.

14. The Judge found that neither requirement had been satisfied. As was noted in paragraph 15 of the determination, the CAS assigned by Kiara College did not confirm that the course would involve further study complementing his previous course.

15. The Judge highlighted two issues that needed to be met. Firstly that the CAS should indicate that the course represented academic progress from the previous study but also if study at the same level there was a need to confirm as complementing the previous course for which the appellant was granted leave. The Judge found that that confirmation was not present and thus the requirement of the Rule was not met. The Judge was of the view as expressed in paragraph 25 that it was a different course at a different institution and there was no relevant connection with a particular course or institution or an educational sequence.

16. The court in the case of **Pokhriyal** recognised the phrase “academic progress” was a vague one. At paragraph 46 of the judgment it indicated that whether a particular course constitutes academic progress is not a hard-edged question but involves comparing the new course with the student’s previous academic achievements and making a value judgment. There was a degree of subjectivity which was inescapable.

17. Paragraph 120B of Appendix A made it clear that it was for the college and not for the Secretary of State to carry out that assessment.
18. The issue that was before the Court of Appeal was whether the college was required expressly to state that the proposed course constituted academic progress or whether the mere issue of a CAS constitutes an assertion to that effect. The court found that the mere issue of a CAS creates a presumption or expectation that the stated course constitutes academic progress.
19. It is not entirely clear from the current determination whether the Judge is accepting the proposition that the CAS was representing academic progress from previous studies but it is clear from the case of **Pokhriyal** that the issue of the CAS could be construed in that way.
20. The burden of the concern of the Judge was however potentially 120A(b) (ii) whether the study was at the same level was whether there was confirmation that it complemented the previous course. The Judge seems to take the view that the further study has nothing to do with the previous unsuccessful study of the ACCA course.
21. It is perhaps difficult on a factual basis to make that sharp distinction, given the language in the CAS which indicates that the student has covered some of the modules for which he is prepared to study tourism and hospitality management. There would therefore seem to be some link between the previous studies and the proposed studies but that precise link perhaps was not examined in any particular detail.
22. The point, which is raised in the decision letter, is simply that there was no academic progress without any further consideration of the subtleties if there were. Indeed as I have indicated the refusal was on the incorrect basis that the study was at a lower level.
23. It is unclear from the judgment whether the Judge is first of all accepting that there was academic progress. Secondly even if he were there is perhaps little analysis as to whether the course is quite different or whether there are links with the proposed course which makes it complementary or having a connection with the former.
24. It seems to me that as a matter of fairness those matters should have been considered in more detail. The Judge, for example, comments in paragraph 16 that the appellant is not re-sitting examinations or repeating modules. It would seem however that he may be repeating modules or at least dealing with modules that were encompassed in the previous course. To say that it was a completely different course without a factual analysis may not be accurate.
25. It seems to me therefore that in the interests of fairness the decision should be set aside.

26. Given however the factual inaccuracies in the original decision it seems to me that the original decision was fundamentally flawed as to the basis of the refusal particularly so in the light of **Pokhriyal**.
27. In those circumstances the appeal should be allowed to the limited extent that it shall be remitted to the Secretary of State for a decision to be made upon the proper basis and in relation to the proper paragraphs in the Immigration Rules.

Signed

Date

Upper Tribunal Judge King TD