



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/42655/2013

THE IMMIGRATION ACTS

Heard at Field House
On 7 November 2014

Determination Promulgated
On 2 December 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DRABU CBE

Between

MR MOHAMMAD RAYHAN SHARIF

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mohammed Kamrul Hasan of Kalam solicitors.
For the Respondent: Mr S Whitwell, Senior Presenting Officer

DECISION AND REASONS

1. This appeal has been brought by the appellant whose application to remain the United Kingdom as a Tier 4 (General) Student Migrant under Points Based System and for a Biometric Residence Permit was refused by the Secretary of State and an appeal brought against that decision was heard and dismissed by Judge Morgan, a Judge of the First Tier Tribunal following a hearing at Taylor House on 18 June 2014 for reasons set out in the determination promulgated on 25 June 2014.
2. The appellant was granted permission to appeal to the Upper Tribunal by Judge Landes, a Judge of the First Tier Tribunal for reasons given in his decision dated 5 September 2014. The appellant is a citizen of Bangladesh. His date of birth is 12 August 1981.

3. The appellant's application for further leave to remain had been refused by the respondent on the ground that he had been unable to meet the requirements of paragraph 245ZX of the Immigration Rules. The sole issue before Judge Morgan had been whether the current application, if successful would cause the appellant to have spent more than five years in the United Kingdom as a student studying courses at degree level or above. It was the respondent's position that if the application were granted it would lead the appellant to spend 64 months in the United Kingdom. Judge Morgan rejected the argument made on behalf of the appellant that the respondent's sums are based on including the three years that he was studying for an ACCA qualification. The Judge did not accept the argument that the appellant had not and could not have studied for three years as the license of the Institution had been suspended by the respondent and that the course was not a degree course.
4. At the hearing before me the respondent's representative described ground 1 of the application as misconceived and agreed that ground 2 was of "real substance". Ground 2 states, "The FTJ also erroneously rejected the argument that the ACCA course should not be counted towards the five years for the purposes of 245 ZX (ha) [paragraph 7 of the determination] Reliance is placed on Mirza (ACCA Fundamental Level qualification – not recognised degree) [2013] UKUT 41 (IAC) states the following at paragraph 39: Even if we were wrong in our conclusion above, it cannot be argued, in our judgment, that the qualification has been 'designated' by the ACCA as being of Bachelor's degree. Indeed the fact that the ACCA encourages students to obtain a separate and independent degree from Oxford Brookes University, because this would enhance their qualifications, suggests that ACCA recognise that their qualifications are not categorised as a degree." He summed up by describing the situation as a "Mess".
5. Counsel for the appellant argued that the appellant had always remained in the United Kingdom lawfully pursuing his education. He pointed out that it quite misleading on the part of the respondent to suggest that the appellant had not been in the United Kingdom lawfully throughout. He had once been refused further leave to remain and his appeal against that decision had been allowed in September. I reserved my decision, which I now give with reasons.
6. In my judgement Judge Morgan materially erred in law in failing to engage with the wording of the paragraph 245 ZX. In my respectful view if he had, Judge Morgan would have accepted the force of the argument that the time that the appellant had spent in studying for ACCA qualification could not be included in the five-year period. ACCA is not a degree level or above course. Furthermore the appellant had not been "studying courses" throughout his stay in the United Kingdom at degree level or above because his educational institution had lost its license for no fault of the appellant. I have of course looked at the decisions of a Upper Tribunal in Mirza [2013] UKUT 00041 (IAC) and Islam [2013] UKUT 000608. I note what has been said in Islam in Paragraph 11 of its determination. Although if looked at cursorily it supports the stand taken by the respondent. However the facts in this appeal are materially different in that the appellant did not drop out of any course. He could not study for part of the relevant period because the license of his educational establishment was suspended.

7. In my judgement, Judge Morgan's decision to dismiss the appeal was materially flawed in law and I therefore set it aside. In remaking the decision I allow the appeal for the reasons given above.

K Drabu CBE
Deputy Judge of the Upper Tribunal
30 November 2014

**To the Respondent:
FEE AWARD**

As I have allowed the appeal and the appellant has paid a fee of £140, I direct that only half of that amount be charged to him and the other half is refunded.

K Drabu CBE
Deputy Judge of the Upper Tribunal