



IAC-FH-AR-V1

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

Appeal Number: IA/19621/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 13 October 2015**

**Decision & Reasons Promulgated
On 13 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**FAIZANKHAN PATHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A Jones, Counsel, instructed by Farani Javid Taylor Solicitors
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against a decision made by First-tier Tribunal (Judge Abebrese) promulgated on 28 April 2015 in which he dismissed the appellant's appeal on immigration grounds under paragraph 245ZH. In a determination the First-tier Tribunal dealt with a preliminary issue as to whether or not there was a right of appeal and that was dealt with in the appellant's favour.
2. The issue before the Tribunal was whether or not the appellant had in fact spent three years studying on courses below degree level. The First-tier Tribunal found

that the appellant had not studied on courses at or above degree level and found that the courses were below and therefore could not meet the requirements of 245ZX(h). The First-tier Tribunal went on to consider whether paragraph 276ADE and/or Article 8 outside of the Rules applied and dismissed the appeal.

3. The grounds of the application for permission argued that the respondent failed to explain how the three years studying below degree level was worked out and reference was made in the Reasons for Refusal Letter to a period of two years and some months not specified. The First-tier Tribunal failed to explain the reasons for reaching its conclusion that there was a period of three years studying below degree level.
4. Permission was then granted by First-tier Tribunal Judge Osborne on 16 July 2015 who found an arguable error of law with reference to an Ofqual diagram which accompanied the grounds showing that level 7 was equivalent to postgraduate course.
5. This afternoon I have heard submissions from Miss Jones and briefly from Mr Walker who agreed with Miss Jones' submissions and the proposed outcome. I am satisfied that there was an error of law in the Tribunal decision and indeed in the original reasons for refusal. The Secretary of State did not specify in terms of years or studies how it was that the appellant did not meet the requirements of the relevant Rules. I have evidence in the form of CAS documentation in a bundle produced for today's hearing which shows and I find that the appellant studied initially on a level 7 course and further that in fact the length of the non-degree studies was two years.

Notice of Decision

6. I find that there was a material error of law in the decision which I set aside. I remake the decision and substitute a decision to allow the appeal on immigration grounds.

No anonymity direction is made.

Signed

Date 23.10.2015

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT **FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a whole fee award of £140.00 for the following reason. The refusal decision made was wrong in fact and the Tribunal Judge failed to consider the same.

Signed

Date 23.10.2015

Deputy Upper Tribunal Judge G A Black