



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

Appeal Number: IA/23121/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 23rd April 2015**

**Decision & Reasons Promulgated
On 19th May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR HASSAM MUSHTAQ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No legal representation

For the Respondent: Mr David Clarke (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Andrew, promulgated on 8th September 2014, following a hearing at Birmingham Sheldon Court on 7th August 2014. In the determination, the judge allowed the appeal of Mr Hassam Mushtaq. The Respondent Secretary of State subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, who was born on 30th June 1991. He appealed against the decision of the Respondent dated 12th May 2014, to refuse to grant him further leave to remain in the UK as a Tier 4 (General) Student under paragraph 245ZX(d) of HC 395, because he had not been awarded 10 points for maintenance (funds).

The Appellant's Claim

3. The Appellant's claim is properly set out by the judge below. She recounted how the Appellant completed a computer-generated form to make his application for further leave. He had to complete the CAS number and the form then generated the amounts which were required to be shown by him to comply with the Rules. The form showed that he needed £1,424 for his fees (which had been paid) and £2,000 for maintenance. The judge observed how it was common ground that the Appellant produced a bank statement showing that he had in excess of this sum (see paragraph 5).

The Judge's Findings

4. At the hearing before the judge on 7th August 2014, the Appellant appeared in person, as he had done before this Tribunal today, and produced further evidence in the form of a letter from BPP University dated 21st May 2014, and this confirmed that contrary to the Respondent Secretary of State's view, the Appellant had not studied for four months in the last twelve months, but had actually studied for more than six months (see paragraph 7 of the determination).
5. The judge considered this to be dispositive of the appeal before her and found in favour of the Appellant, whereupon the Secretary of State appealed to this Tribunal.

The Grounds of Appeal

6. The grounds of appeal essentially make two points. First, that the First-tier Tribunal was not in a position to be the primary decision maker in the circumstances that existed before her, and ought to have remitted the matter back to the Secretary of State when, contrary to Section 85A of the 2002 Act, additional material in the form of a letter from BPP University dated 21st May 2014 (postdecision evidence) was produced, showing the Appellant to have studied in the UK for more than six months in the past twelve months.
7. Second, the judge could have made a finding that the decision of the Respondent was not in accordance with the law and only have allowed the appeal to the limited extent that it remained outstanding, and then to await a fresh decision from the Secretary of State. This was important so that the judge could consider the postdecision evidence.
8. On 17th October 2014, permission to appeal was granted.

Submissions

9. At the hearing before me on 23rd April 2015, the Respondent Secretary of State was represented by Mr Clarke, a Home Office Presenting Officer, and the Appellant appeared in person himself. Mr Clarke, much to his credit in the appeal before me,

made it clear at the outset that the evidence before the judge, even prior to the disclosure of the BPP letter of 21st May 2014, did indicate that the Appellant had studied for six months out of the last twelve. The Appellant started studying in 2012. He then applied for an extension of leave. This was from August 2013 until May 2014 and it was granted. The Appellant continued with his studies.

10. For his part, Mr Mushtaq, drew my attention to paragraph 14 of Appendix C. This is clear in stating that,

“An applicant will have an established presence studying in the UK if the applicant has current entry clearance, leave to enter or leave to remain as a Tier 4 Migrant, student or as a postgraduate doctor or dentist and at the date of application:

...

(ii) is applying for continued study on a single course where the applicant has completed at least six months of that course ...”.

Mr Mushtaq Hassam submitted that the evidence was plain before the First-tier Tribunal that he could comply with paragraph 14(ii) of Appendix C.

11. Mr Clarke was invited to reply further to the submissions and declined to do so.

No Error of Law

12. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside that decision. On any view, the decision by the judge is clear, concise, and to the point. It adequately deals with the issues raised. The evidence from the Appellant is set out (see paragraph 5) prior to the hearing and the evidence at the hearing is also presented. The case for the Respondent was that the Appellant did not have an established presence in the United Kingdom. This was plainly untenable because the CAS submitted confirmed that he did, and by the date of the hearing before the judge (which on any view appertained to the time of the decision by the judge) confirmed in the form of a BPP letter dated 21st May 2014, that this was the case.

Notice of Decision

13. There is no material error of law in the original judge’s decision. The determination shall stand.
14. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

14th May 2015