



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: IA/41487/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House, London  
On 8 October 2015**

**Decision and Reasons  
Promulgated  
On 9 October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**MOHAMMAD TOUHID HOSSAIN**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: no appearance

For the Respondent: Mrs N Willocks-Briscoe, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, a national of Bangladesh, appealed to the First-tier Tribunal against the decision of the respondent of 21 October 2014 to refuse his application for leave to remain as a Tier 4 General Student and for a biometric residence permit. First-tier Tribunal Judge J S Pacey dismissed the appeal. The appellant appeals with permission to this Tribunal.
2. The appellant notified the Upper Tribunal by letter dated 28 September 2015 that he wished to have his appeal considered on the papers. He did not therefore attend the hearing on 8 October 2015. I heard

submissions from Mrs Willocks-Briscoe and I reserved my decision to be determined on the papers.

3. The background to this appeal is that the appellant was issued with entry clearance valid from 28 May 2009 and entered the UK as a Tier 4 student. It is unclear from the papers before me whether or when the first period was renewed but the appellant made his most recent application for leave to remain on 28 June 2014. That application was to study for an ATHE Level 7 Diploma in healthcare management from June 2014 until June 2015.
4. The respondent refused that application for two reasons, firstly that the Brac bank statement submitted with the application was false and secondly that the appellant had previously been granted leave to study courses at degree level or above for four years and one month and therefore a grant of leave to study the ATHE Level 7 Diploma would result in him having spent more than 5 years in the UK as a Tier 4 (General) Student studying courses that consist of degree level study or above contrary to paragraph 245ZX (ha). The reasons for refusal letter states that the appellant had no right of appeal against the decision.
5. The First-tier Tribunal Judge firstly determined that the appellant does have a right of appeal. That decision has not been challenged. The First-tier Tribunal Judge found that the respondent had not discharged the burden upon her in relation to the alleged fraudulent bank statements. That decision has not been challenged either.
6. However the Judge did note that the appellant had not addressed the remaining issue in his appeal, that is whether the grant of leave to study would result in his spending more than 5 years in degree level studies. The Judge found that the appellant first came to the UK with a Tier 4 visa valid from 28 May 2009 and that the current application is over five years from the date of the issue of the original visa. The Judge therefore dismissed the appeal on the basis that the appellant had not discharged the burden of proof upon him to establish that he met the requirements of paragraph 245ZX (ha).
7. The appellant submitted a CAS with his appeal to the Upper Tribunal which he says relates to his initial studies for a HND Business Management course at NQF level 5. The appellant says in his grounds of appeal that this CAS was not available to him at the time of the First-tier Tribunal appeal. He says therefore that whilst he was on this course during the period from 28 May 2009 until 28 October 2010 (when he went to LSC London to study a BA (Hons) course) does not count towards degree level studies.
8. However the appellant was aware from the reasons for refusal letter that the level of his studies was in issue before the First-tier Tribunal and he has not explained why he did not submit the CAS before the First-tier Tribunal dealt with his appeal.

9. The appellant says in his grounds that the onus was on the respondent to show that he met the requirements of paragraph 245ZX (ha) as the respondent had the relevant records. However it is clear from the reasons for refusal letter that the respondent did not accept that the appellant met the requirements of paragraph 245ZX (ha) and the burden of proof was on the appellant in relation to this matter.
10. Further, the CAS he submits now does not confirm that he actually undertook the course for which the CAS was issued. In any event it is not in dispute that this document was not before the First-tier Tribunal Judge. Accordingly she could not have taken it into account in reaching her decision. The Judge cannot have erred in her calculation of his studies at level 5 if she had no evidence before her as to these studies.
11. In these circumstances I find that the First-tier Tribunal Judge did not make an error of law.

Conclusion:

The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

The decision of the First-tier Tribunal shall stand.

Signed

Date: 8 October 2015

A Grimes

**Deputy Judge of the Upper Tribunal**