IAC-AH-CO-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/45561/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25 February 2015	**On 6 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR AHMAD RAZA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr S Walker, Home Office Presenting Officer
For the Respondent: Mr M Saeed, Legal Solutions Ltd

DECISION AND REASONS

1. I shall refer to the respondent as the appellant as he was before the First-tier Tribunal. The appellant is a citizen of Pakistan and his date of birth is 11 February 1990.

2. The appellant made an application to vary his leave as a Tier 4 (General) Student on 30 July 2013. His application was refused by the Secretary of State in a decision of 30 September 2013. The reasons for the refusal are as follows:

© CROWN COPYRIGHT 2015

(i) All study that forms part of the course must take place on the premises of the Tier 4 Sponsor who is supporting the student's application and this does not appear to be the case as far as the appellant is concerned.

(ii) The appellant has previously been granted leave to study courses at degree level or above for four years and two months and his current application is to study level 6 diploma in leadership and management until 20 January 2015. A grant of leave to study this course would result in the appellant having spent more than five years in the UK as a student.

3. The appellant appealed against the decision of the Secretary of State and his appeal was allowed by Judge of the First-tier Tribunal Flynn, having determined the appeal on the papers at the request of the appellant, in a decision that was promulgated on 24 September 2014.

4. The Secretary of State was granted permission to appeal by Judge P J M Hollingworth in a decision of 9 January 2015. Thus the matter came before me.

The Decision of the First-tier Tribunal

5. Before the judge there was the appellant's statement of evidence. The judge made the following findings:

> "11. The respondent refused the application because she was satisfied that the sponsor did not have the required educational oversight for the training site where the appellant would be studying.
>
> 12. The appellant disputed the respondent's statement and neither party has submitted any evidence in relation to this issue. However, I note that, before the respondent made her decision on 2 October 2013, the sponsor's licence was revoked on 16 September 2013. It does not appear that the respondent took account of her policy for students of suspended sponsors and therefore I find her decision was not in accordance with the law.
>
> 13. I have noted the respondent's statement that the appellant was not entitled to study in the UK because the total period of study would exceed five years. The appellant has provided calculations which indicate that his studies are not as lengthy as the respondent considered.
>
> 14. I agree with the appellant that it is not correct for the respondent to include in her calculations periods of study which had to be repeated because the sponsor's licence was suspended. I do not therefore agree with the respondent that she was entitled to refuse the application for this reason.
>
> 15. I am satisfied that the appellant's college was not on the Tier 4 Sponsor Register at the date of the decision. I therefore find that the appellant is entitled to a 60 day grant of leave in order to find a new

sponsor. I allowed the appeal so that the respondent can issue leave in accordance with her policy for suspended sponsors."

The Grounds of Appeal and Oral Submissions

6. The first ground maintains that the judge erred when she found that it was not correct for the respondent to include in the calculation for the purposes of 245ZX(ha) study which has to be repeated because the sponsor's licence was suspended. There is no basis in law for this finding. The second ground for appeal maintains that the judge did not identify period she found relevant for the purposes of paragraph 245ZX (ha). It is not clear on what evidential basis the periods of study are calculated. The judge relied on the bare assertions of the appellant who was not present to give oral evidence. Both parties made oral submissions. Mr Walker said it seemed to him considering the revocation of the licence that the decision by Judge Flynn was correct and that the grounds of appeal are misconceived when taking into account all of the evidence.

The Relevant Immigration Rules

7. Paragraph 245ZX contains the requirements for leave to remain as a Tier 4 (General) Student Migrant and 245ZH(ha) reads as follows:

"If the course is at degree level or above, the grant of leave to remain the applicant is seeking must not lead to the applicant having spent more than five years in the UK as a Tier 4 (General) Migrant, or as a student, studying courses at degree level or above unless:

...

Paragraph 245ZY assists with calculating the relevant period and 245ZY(b) reads as follows:

In addition to the period of leave to remain granted in accordance with paragraph (a), leave to remain will also be granted for the periods set out in the following table. Notes to accompany the table appear below the table.

Type of Course	**Period of Entry Clearance to be Granted Before the Course Starts**	**Period of Entry Clearance to be Granted After the Course Ends**
Twelve months or more.	One month.	Four months
Six months or more but less than twelve months.	One month.	Two months.

Pre-sessional course of less than six months.	One month.	One month.
Course of less than six months. This is not a pre-sessional course.	Seven days.	Seven days.
Postgraduate doctor or dentist.	One month.	One month.

Notes

(i) ...

(ii) ...

(iii) The additional periods of leave to remain granted further to the table above will be disregarded for the purposes of calculating whether a migrant has exceeded the limits specified at 245ZX(h) to 245ZX(hb)."

8. Both parties agreed that these were the relevant Rules in place at the date of the decision.

The Evidence of the Appellant Before the First-tier Tribunal

9. The appellant gave an account of the history of his studies here. This was not challenged. He studied at Kaplan Financial College between 1 July 2008 and 17 August 2009. He studied at the same institution between 1 September 2009 and 31 August 2009. He studied at London School of Business and Finance between 31 January 2011 and 15 June 2012. He started a course at Edwards College Ltd which commenced on 19 November 2012. This course was due to conclude on 21 October 2014; however, the licence of the college was revoked on 2 March 2013. The appellant applied to study a course at Burnley Training College which commenced on 20 August 2013 and would have concluded on 20 January 2015; however, the licence of the college was revoked on 16 September 2013 shortly before the refusal of his application.

10. According to the appellant he has spent 46 months and nine days studying at undergraduate level.

11. The appellant submitted documentary evidence to establish the places where he studied and the duration of the courses. His evidence was not challenged by the Secretary of State.

Conclusions

12. Mr Walker was able to confirm to me the periods of leave granted to the appellant as a student as follows:

    28 June 2008 to 30 November 2009;
    2 February 2010 to 16 December 2010;
    20 January 2011 to 15 October 2012;
    19 December 2012 to 21 February 2015 (However, the appellant's leave was curtailed on 31 May 2013 because of the revocation of the sponsor's licence).

13. The respondent did not provide any information about how the appellant's leave for the purposes of Rule 245ZX (ha) was calculated with regard to paragraph 245ZY(b)(iii). The respondent's case is unsatisfactory. The refusal letter was not sufficiently detailed and Mr Walker was not able to fill in the gaps. In the Reasons for Refusal Letter it is asserted that the appellant has spent four years and two months in the UK as a student. It is not clear whether this figure takes into account the additional periods of leave that should be disregarded. I have calculated that the appellant's leave to remain to date amounts to four years and eleven months. This figure does not take into account the additional periods that should be disregarded. The appellant's evidence is that including the period of study, which is the subject of the latest application, the relevant period is 46 months and nine days. However, it is clear that his calculation are not correct because in his witness statement he refers to periods of study only and not leave and periods of leave post the revocation of the sponsor's licence have been disregarded. There was insufficient evidence before the First-tier Tribunal to establish the relevant period. It seems to me that the period up until the curtailment of the appellant's leave on 31 May 2013 in addition to grant of leave contemplated in his application would be in excess of five years. However, in my view the evidence presented by both parties was inadequate.

14. The judge gave inadequate reasons for finding in the appellant's favour in this case in relation to the immigration rules. It is not clear how she calculated the period. What concerns me is that the appellant was originally granted leave to remain from 20 August 2013 until 20 January 2015 (This was subsequently curtailed as a result of the college's licence having been revoked), but surely on the respondent's calculations, the appellant would not have been entitled to this grant of leave. It also concerns me that in the appellant's witness statement he refers to undergraduate studies whereas 245ZX (ha) refers to courses at degree level or above.

15. The licence for Burnley Training College was revoked shortly before the decision of the Secretary of State and the appellant was not given the opportunity to find an alternative college and if necessary an alternative course of study. In the light of this and the inadequate decision letter, in my view, it was open to the judge to allow the appeal on the basis that the decision was not in accordance with the law. It is clear to me that the

appellant only became aware of the revocation of the licence on 16 September 2013 which was shortly before the decision and he should have been afforded a reasonable opportunity to vary the application: Patel (revocation of sponsor licence – fairness) India [2011] UKUT 211 (IAC).

16. For the above reasons I find that the judge made an error of law in finding that the appellant was able to meet the requirements of the Immigration Rules. Her ultimate decision however was to allow it on the basis that the decision was not in accordance with the law. This was a decision that was open to the judge and it is maintained.

17. The appeal was allowed to the limited extent that the decision is not in accordance with the law and it ceases to have effect. The application remains outstanding. I remind the Secretary of State that what is required to give effect to the principle of fairness in this case is for a fresh decision not to be made for a period of 60 days from the date of the reason decision being transmitted to the parties to enable the appellant to obtain a fresh sponsorship letter that is current and enable his existing application to be varied should he meet the requirements of the rules.

18. It may be that when the appellant submits an application it becomes clear that his application should be refused under 245ZX(ha); however, if this is the case it is incumbent on the respondent to properly explain how the leave to remain has been calculated in accordance with 245ZY(b)(iii).

No anonymity direction is made.

Signed Joanna McWilliam Date 5.3.15

Deputy Upper Tribunal Judge McWilliam