Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/13461/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 1st June 2016	**On 6th June 2016**

Before

UPPER TRIBUNAL JUDGE SOUTHERN

Between

MD ZAKIR HOSSAIN

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Appeared in person, not represented.
For the Respondent: Mr S. Kotas, Senior Home Office Presenting Officer

DECISION

1. The appellant, who is a citizen of Bangladesh, has been granted permission to appeal against the decision of First-tier Tribunal Judge Quinn who, following a hearing on 5 October 2015, dismissed his appeal against a decision of the respondent, made on 16 March 2015 to refuse to vary his leave by way of a further grant of leave as a student. That application was refused under paragraph 245ZX(h) of HC 395 because, if the leave sought had been granted, the appellant would have spent more than 3 years studying on courses below degree level. The judge dismissed the appeal on human rights grounds also, finding that the claim advanced under article 8 of the ECHR was not made out.

2. The essential facts are not in dispute. The history of leave granted and studies undertaken by the appellant is as follows:

    a. London Trinity College – CAT, NQF Level 4 from 29/9/2010 to 28/2/2012 ;

b. Seven Oaks College – Diploma in Business Studies from 16/7/2012 to 15/11/2013;
c. London Regal College – NQF Level 5 Business and Administrative Management from 15/7/2013 to 31/5/2014.

The application with which we are now concerned was for leave to remain in order to undertake a course at Level 5 (Diploma in Business management) which, again, is a course below degree level. As a matter of arithmetic, completion of that course would have had the result that the appellant would have been studying at below degree level for more than three years.

3. Paragraph 245ZX provides, so far as is relevant to this appeal:

> **245ZX. Requirements for leave to remain**
>
> To qualify for leave to remain as a Tier 4 (General) Student under this rule, an applicant must meet the requirements listed below. If the applicant meets these requirements, leave to remain will be granted. If the applicant does not meet these requirements, the applicant will be refused.
>
> **Requirements:**
> …
> (h) If the course is below degree level the grant of leave to remain the applicant is seeking must not lead to the applicant having spent more than 3 years in the UK as a Tier 4 Migrant since the age of 18 studying courses that did not consist of degree level study.
> …

It is plain beyond doubt, indeed, it is not in dispute, that on the basis of the leave previously granted, the appellant cannot meet that requirement of the applicable rule.

4. The grounds upon which the appellant sought and was granted permission to appeal were that as each of his three previous attempts to complete courses were thwarted by the decision of the respondent to revoke the sponsor licence of the colleges at which, successively, he was seeking to study, principles of common law fairness demanded that those periods of leave should not be taken into account for the purposes of 245ZX(h). This is because, had the respondent not revoked those sponsor licences, the appellant would have been able to complete his courses.

5. In advancing his case before the Upper Tribunal the appellant explained that his ambition was to study at a British university to obtain a degree that would equip him on return to Bangladesh to embark upon what was likely to be a promising career, equipped with a much respected UK degree. He has, of course, invested a very considerable sum of money, as well as some important years of his life. If not granted further leave to realise his academic ambitions, he will return to Bangladesh empty handed, despite that very significant investment in terms of time and resources.

6. Having heard from the appellant I have no hesitation in accepting that his experience has been as he has described. For the avoidance of any possible doubt, there is no suggestion that he contributed in any way to the circumstances that gave rise to the decision to revoke the sponsor licences of the three colleges at which he attempted to secure the qualifications he needed to seek admission to a university and the basis upon which to apply for leave to study at graduate level. It has to be recognised though that it was his choice of colleges, informed by financial considerations, that has put him in the position in which he now finds himself.

7. In granting permission to appeal, First-tier Tribunal Judge Zucker said:

> "It is arguable that whilst the judge recognised that the issue of fairness was raised he did not adequately engage with it nor make adequate findings [see paragraphs 25 and 26]"

At paragraphs 25 and 26 of his decision the judge said this:

> "The Respondent had acted in accordance with the Rules and the Rules stated quite clearly "if the applicant does not meet these requirements, the applicant will be refused.
>
> I did not think that the Respondent's decision was irrational or unfair in the circumstances."

8. It is, with respect, not altogether easy to see what further findings should be demanded of the judge. The requirements of the rule could not be more clear. It is the policy of the respondent, expressed through this immigration rule, that those seeking to acquire sub-degree level qualifications should be allowed no more than 3 years to do so. A person who does not manage to achieve that is on notice that further applications for leave are to be refused. Although the context was somewhat different, it is illuminating to have regard to observations made by Sharpe LJ recently in *SSHD v KG (India)* [2016] EWCA Civ 477 in finding that the judge who had allowed an appeal in that case, even though the strict requirements of the rule had not been met, although by a very small margin:

> "…was to ignore the plain and ordinary meaning of the rule which the respondent was required to comply with. More generally however, this failed to have regard to the importance of certainty and consistency which underpins the effective and fair operation of the Points Based Scheme as between one applicant and another; and the requirement, of which those attributes are an important part, that the Scheme must be workable….."

Of course, the application made by this appellant was not refused because he failed to secure the requisite number of points demanded by the rule but the point in play is analogous. Sharpe LJ continued:

> "As Lord Bingham of Cornhill said, when giving the opinion of the Appellate Committee of the House of Lords in *Huang* [2007] UKHL 11 [2007] 2 AC 167 at paras 6 and 16, rules to be administratively workable require that the line be drawn somewhere; he pointed to the general administrative desirability of applying known rules if a system of immigration control is to be workable, predictable, consistent and fair as between one applicant and another, and also to the damage to good administration and effective control of a system is perceived by applicants internationally to be unduly porous, unpredictable or perfunctory."

9. That is precisely the position with this appeal. The appellant, as we have seen, arrived in the United Kingdom on 13 November 2010, well over 4 years ago as at the date of the decision, to pursue studies that he, and all other prospective students, were told must be completed within 3 years. While it is impossible not to entertain considerable sympathy for the appellant, for the reasons I have already given, there was no unfairness suffered such as to impugn the decision to refuse yet further leave to remain, and the decision of the judge to dismiss the appeal against that refusal is simply unassailable.

10. In granting permission, First-tier Tribunal Judge Zucker detected the possibility of an arguable challenge that had not been raised in the grounds, that being that the appellant had not been offered "a 60 day letter". That, it must be assumed, is a reference to the policy of the respondent that applies in circumstances where a pending application for further leave falls to be refused because the college at which the applicant seeks leave to study has its sponsor licence revoked after the application for leave has been submitted but before it was decided. The applicant in those circumstances is provided with an opportunity to find an alternative college and, if he or she by that time has no leave remaining, is offered a further 60 days in which to do so. But that is concerned with an entirely different question of fairness and does not erode in any way the applicability of the mandatory requirement of 245ZX(h) that, regardless of anything else, leave is not to be granted if the result would be that the applicant had spent more than 3 years in the United Kingdom as a Tier 4 Migrant. The grant of leave would achieve precisely the opposite of what was intended by the rule.

11. The First-tier Tribunal judge dismissed the appeal also on article 8 grounds. The grounds for seeking permission to appeal raise no specific challenge to that and nor could they as any such ground was unarguable and bound to fail.

12. For these reasons the appeal to the Upper Tribunal must fail. The First-tier Tribunal judge made no error of law and there is no basis at all upon which to disturb his decision.

Summary of decision:

13. First-tier Tribunal Judge Quinn made no error of law and his

decision to dismiss the appellant's appeal is to stand.

14. The appeal to the Upper Tribunal is dismissed.

Signed Date: 2 June 2016

Upper Tribunal Judge Southern