



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/07931/2016

THE IMMIGRATION ACTS

Heard at Field House London
On 15 May 2018

Decision & Reasons Promulgated
On 23 May 2018

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL McCARTHY

Between

**SHIRIN AKTER
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms P Glass, instructed by PGA Solicitors LLP (Mile End Road)
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal against the decision and reasons statement of First-tier Tribunal Judge Callow that was issued on 8 January 2018. The appeal is brought with permission granted by First-tier Tribunal Judge Boyes on 16 February 2018 because Judge Callow may have misunderstood the nature of the appellant's educational history.
2. Before I examine the competing arguments, I summarise the appellant's immigration and educational history, as it was disclosed to Ms Glass, Mr Tarlow and myself during the hearing. The appellant's disclosures came as something of a surprise to us all because it gave a different history to that disclosed previously by the appellant's legal representatives.

3. The appellant arrived in the UK with entry clearance that acted as leave to enter as a tier 4 (general) student migrant. Her first period of leave ran from 1 February 2011 to 30 April 2013. That period has no bearing on the current proceedings.
4. The appellant applied in time for further leave as a student and was granted such leave on 10 May 2013. That leave ran until 18 August 2014. Relating to this application, the appellant relied on a CAS issued by Swarthmore College on 21 March 2013, which was valid for six months. Once leave had been granted, the appellant undertook additional studies at the London School of Management and worked towards a MA degree in Marketing and Innovation, such degree to be awarded by Anglia Ruskin University.
5. Before this second period of leave expired, on 18 August 2014, the appellant made an application for further leave as a tier 4 student and relied on a CAS issued by Opal College. Before the respondent decided that application, Opal College was removed from the tier 4 sponsor register. Following Home Office guidance, the appellant was notified that she had 60 days to amend her application or make a different application.
6. The appellant, having been notified on 27 February 2014 that she was to be awarded a MA degree, applied on 24 May 2014 for leave as a tier 2 migrant. That application was initially refused by the respondent on 13 August 2015 without a right of appeal. Following judicial review proceedings, the respondent withdrew that decision and on 2 March 2016 issued a fresh negative decision with a right of appeal.
7. The main difference in the history now provided is that the appellant never had a CAS to study at London School of Management. Mr Tarlow said that had no impact on the case to be considered because: (i) the appellant was entitled to undertake other course of study in parallel to the one for which leave was granted, and (ii) the issue which was in dispute was whether the appellant was studying at London School of Management or Anglia Ruskin University when the MA degree was awarded.
8. In making these observations, Mr Tarlow was clearly referring to paragraph 245HD(d)(v) of the immigration rules, which provides:

If the institution studied at is removed from the Tier 4 Sponsor Register, the applicant's qualification must not have been obtained on or after the date of removal from the Sponsor Register.

9. Ms Glass submitted that the appellant should be regarded as studying at Anglia Ruskin University at the time her MA degree was awarded. She argued it was clear that London School of Management merely acted as an agent for the University. The University was the awarding body and governed the course that had to be taken. This was evident, she said, from the fact the appellant had to submit her coursework to the University for marking.

10. Ms Glass also submitted that even if the appellant had been studying at the London School of Marketing, her studies there ceased by 30 June 2014, which was the deadline for submitting her coursework. Thereafter, she should be treated as falling under the aegis of Anglia Ruskin University because that institution undertook the marking of the course work and all further correspondence was with them.
11. Ms Glass argued that the fact the appellant held a student card issued by Anglia Ruskin University was evidence that the appellant was enrolled there as a student.
12. I reminded Ms Glass that I was considering whether Judge Callow had erred in law and was not reviewing the case *ab initio*. There had been no application to admit late evidence.
13. Mr Tarlow responded by showing myself and Ms Glass a document provided by the appellant in support of her judicial review application. It was headed, "Anglia Ruskin University - European Diploma Supplement". It contained details about the appellant's studies. Mr Tarlow drew our attention to the top right corner where it stated, "Teaching campus: London School of Management". The same document indicated the course started on 11 February 2014 and was a six-month MA degree course.
14. I gave Mr Tarlow the same reminder I gave Ms Glass.
15. I mention that neither representative objected to me seeing the additional evidence. In the unusual circumstances of this appeal, where the factual matrix changed, I considered it was appropriate to consider the additional information and evidence because if there had been an error of fact, then they may be an error of law. Although I am slow to permit a change to the grounds of appeal, this situation is unusual and I reminded myself and the representatives of the need to give effect to the overriding objective.
16. Both representatives agreed that the second ground, whether the appellant met the resident labour market test would stand or fall with the primary ground.
17. Given the developments at the hearing, I reserved my decision so that I could reflect on the factual and legal issues. I have reached the following conclusions.
18. The central issue in this appeal is whether Judge Callow properly applied paragraph 245HD(d)(v) of the immigration rules.
19. There is no dispute that the appellant had leave to remain as a tier 4 (student) migrant until 18 August 2014 and that her leave continues by application of s.3C of the Immigration Act 1971 because her application for an extension was made in time.

20. There is no dispute that the appellant was enrolled and studying at the London School of Management from February 2014. Mr Tarlow has confirmed that she was entitled to enrol and study there because she took the course alongside a diploma course she was pursuing elsewhere for which she had a valid CAS.
21. It is not disputed that the London School of Marketing was removed from the tier 4 sponsor register on 5 September 2014.
22. What is disputed is whether the appellant should be regarded as studying at the London School of Marketing after 30 June 2014 because after that date there was no need for her to attend the college as her coursework had been submitted to Anglia Ruskin University and they took responsibility thereafter for assessing her work and awarding her MA degree.
23. At paragraph 15 of his decision and reasons statement, Judge Callow decided the appellant did not meet the provisions of paragraphs 245HD(b)(ii) and (d)(v) because she was not registered with Anglia Ruskin University. He does not give any other reason. In essence, I am asked to decide whether the reason given by Judge Callow is adequate.
24. The author of the grounds of application reminds me the guidance provided by Lord Brown in *Mahad v SSHD* [2009] UKSC 16 at paragraph 10 that the immigration rules,

“... are not be construed with all the strictness applicable to the construction of a statute or a statutory instrument but, instead, sensibly according to the natural and ordinary meaning of the words used, recognising that they are statements of the Secretary of State’s administrative policy.”
25. I have considered the natural and ordinary meaning of paragraph 245HD(d)(v) and in relation to the appellant find the London School of Management to be the “institution studied at”. I reach this conclusion because the appellant was enrolled in that institution to obtain her MA degree. That was the evidence before Judge Callow.
26. There can be no legal error in Judge Callow not making a finding regarding the student identity card issued to the appellant by Anglia Ruskin University because that evidence was not provided to him. Even were I to admit that document at this late stage, I would have to find that it does not establish that the University was the institution at which the appellant was studying. Nothing has been provided to show the appellant was enrolled at the University. It is well known that many if not all university run external degree courses, where teaching is provided by a different institution. That is the situation here.
27. The fact that the appellant had no need to contact London School of Management after she submitted her coursework does not mean it was no longer the institution at which she studied. It is evident from her own account that she was taught at the

London School of Management. There is no evidence to show that on submission of her coursework she transferred to Anglia Ruskin University. For whatever reason, paragraph 245HD(d)(v) requires the qualification obtained to be obtained at a time the institution where the person studied is included in the tier 4 sponsor register. It is not for the judiciary to go behind a policy; what is required is that the policy has been applied consistently and coherently. Judge Callow found that to be the case and I cannot fault his finding for the reasons I have given.

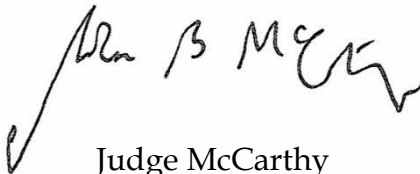
28. It follows that the appeal to the Upper Tribunal fails and the decision of Judge Callow is upheld. In reaching this conclusion, I note that ground 2 cannot stand on its own and there are no other challenges to Judge Callow's decision and reasons statement.

Notice of Decision

The appeal is dismissed.

The decision of FtT Judge Callow does not contain legal error and is upheld.

Signed



Date

17 May 2018

Judge McCarthy
Deputy Judge of the Upper Tribunal