



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/00478/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29 September 2015**

**Decision & Reasons  
Promulgated  
On 30 September 2015**

**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

**Mr MD NASHIR AHAMED KHAN**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Mr N Bramble, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Frankish on 7 July 2015 against the determination of First-tier Tribunal Judge Bradshaw who had dismissed the Appellant's appeal against the Secretary of State's decision dated 16 December 2014 in a determination promulgated on 22 April 2015. The

Appellant is a national of Bangladesh, who had applied for further leave to remain as a Tier 4 (General) Student Migrant, which was refused on the grounds that the Appellant had not submitted a current IELTS certificate to B2 level and had also not met the requirements of paragraph 245ZX(1) of the Immigration Rules in that the start date of the proposed course was more than 28 days after the expiry of the previous leave. The reasons for refusal letter conveying the decision to refuse to vary the Appellant's existing leave incorporated a second decision to remove the Respondent by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006. The appeal had been determined on the papers as the Appellant had requested.

2. Judge Frankish considered it arguable that because Judge Bradshaw had been struggling with limited information and a certificate of posting had now been provided, an arguable error of law might have arisen. There were other possible issues of law, such as the fact that the Appellant's extant leave had continued under section 3C of the Immigration Act 1971.
3. When the appeal was called on for hearing, there was no appearance by the Appellant nor any application for an adjournment in consequence. Having satisfied itself that notice of the time, date and place of the hearing had been duly served on the Appellant, and further noting that the Appellant had requested that his initial appeal should be determined on the papers, the tribunal decided that it should proceed in the Appellant's absence and that his appeal could be fairly and justly determined in such absence.
4. Mr Bramble for the Appellant relied on the rule 24 notice dated 17 July 2015 which the Respondent had served indicating that the onwards appeal was opposed. The Appellant now wished to rely on evidence which he had not placed before the First-tier Tribunal judge. In any event, making due allowance for the fact that the Appellant was unrepresented, there was no supporting evidence to show what documents the certificate of posting related to.
5. The other point the Appellant had raised concerning QI (Pakistan) [2011] EWCA Civ 614 had merit, in that the Appellant's in time application for further leave to remain meant that his extant Tier 4 (General) Student Migrant

leave continued by virtue of section 3C, an authority which the judge had not considered. However the appeal failed in any event because of the Appellant's failure to prove how he lodged the IELTS certificate on which he relied. Thus the determination should stand.

6. The tribunal should not interfere with a properly reasoned determination of a First-tier Tribunal judge unless there is a clear and material error of law. It was up to the Appellant to submit his evidence in advance and accordance with the tribunal's directions and for him to ensure that any submissions of law were clearly set out. The Appellant chose to proceed on the papers only. He is now attempting to reargue his appeal with fresh and inadmissible evidence. But, as Mr Bramble pointed out, that fresh evidence is itself inconclusive. The judge gave proper and secure reasons for dismissing the appeal at [9] and [10] of his decision. That finding meant that the judge had no option but to dismiss the appeal.
7. The succinct terms in which the onwads grounds of appeal were drafted indicate that the Appellant has access to well informed legal advice, although the author of the grounds has not identified himself/herself. As Mr Bramble very properly conceded, the judge's discussion of the other element of the appeal (see [13] of the decision) is mistaken in that QI (above) as decided in the Court of Appeal emphasises the importance of section 3C of the Immigration Act when construing paragraph 245ZX(1) of the Immigration Rules. The Appellant should have drawn the judge's attention to relevant authority, given his access to legal assistance. But the judge's error of law cannot be seen as material in that respect, since the appeal was doomed because of the findings made at [9] and [10] of the decision.
8. The onwads appeal is accordingly dismissed.

### **DECISION**

The making of the previous decision did not involve the making of an error on a point of law. The decision stands unchanged

**Signed**

**Dated**

**Deputy Upper Tribunal Judge Manuell**