



IAC-FH-AR-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/39342/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 16 July 2015
Delivered orally**

**Decision & Reasons Promulgated
On 31 July 2015**

Before

**THE HONOURABLE MR JUSTICE COLLINS
UPPER TRIBUNAL JUDGE GOLDSTEIN**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**LIONEL KSETCHAKEU NDAMEUN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr N Bramble-Senior Home Office Presenting Officer

For the Respondent: No Representative

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Agnew given on 26 January 2015 whereby he allowed the respondent's appeal, as he now is, against a refusal by the Secretary of State of his application for leave to remain on the basis of a Tier 4 continuation of study. The refusal was on this basis:

“You have previously been granted leave to study courses at degree level or above for two years and eleven months. Your current application is to study

access to computing leading to a BSc computing an NQF level 6 course until 9 December 2016. A grant of leave to study this course would result in your having spent more than five years in the UK as a Tier 4 (General) Student studying courses that consist of degree level study or above. And therefore you fail to meet the requirements of paragraph 245ZX(ha) of the Immigration Rules.”

Paragraph ZX(ha) does indeed provide, that the course at degree level or above the grant of leave to remain, must not lead to the applicant having spent more than five years in the UK as a Tier 4 (General) Student studying courses at degree level or above.

2. In his notice of appeal to the First-tier Tribunal, the appellant as then was, indicated that it transpired that the course which he was to undertake at the college, came to an end and therefore he was changed to a lower level course and he says the college did not inform the Home Office about this change as it is not required to if a student changes courses with the same sponsor, given that the current leave covers the length of the new course. Accordingly, he did not therefore fall within paragraph 245ZX(ha), because it was not a course that was at degree level any more. But he also went on to say, that he was now studying at the University of Buckingham and wanted time to complete a postgraduate course thereafter and he said that he should not be penalised for his previous sponsor’s actions and should be given the chance to pursue his educational goals and he had accepted the course at the University of Buckingham which he had started and was finding it a good course and hoped he would be successful.
3. Unfortunately, no one in the Home Office apparently spotted the effect of this, because albeit it would seem to overcome the objection relied on, namely the breach of the five year requirement of 245ZX(ha) but had it been properly considered, it would have been appreciated, assuming whoever it was, could follow these incredibly complicated Rules, that by 245ZW(c)(iv) it was provided that one of the conditions which was material, was that there should be no study except under (i), paragraph 2:

“A new course at a lower level than the course of which the Confirmation of Acceptance for Studies was assigned or the visa letter was issued provided that the requirements and conditions of the migrant’s grant of leave as at the date of the commencement of the new course are the same requirements and conditions to which the migrant’s leave would have been subject had he made an application to study at that lower level under the Rules in force at the time of the commencement of the new course”
4. One goes on to part 245ZX(h) which states, that 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 three years in the UK as a Tier 4 Migrant since the age of 18 studying courses that did not consist of degree level study. So one goes back to that, as it happens, his new course at the University of Buckingham, that is a degree course and therefore he is not caught now by the three year Rule. Nonetheless he is still caught by the five year, or would be if that were taken into account.

5. However none of this was raised before the First-tier Tribunal Judge. So far as he was concerned, it was the case on behalf of the Secretary of State, that there was a failure to meet 245ZX(ha) and that was the decision against which the appeal was brought.
6. The matters relied on in the grounds of appeal were, as we say, first of all that 245ZW(c)(iv) was not taken into account and therefore the appellant as he then was, could not succeed. Whether on the facts now that is right is another matter.
7. But this was a decision reached on the papers. The Home Office had every opportunity because it is not as if any of the material facts were concealed by the respondent. He set them out quite clearly in his grounds of appeal and they were referred to and were before the First-tier Judge. Mr Bramble has very sensibly recognised, correctly so, that he is in difficulty in relying on the matters which ought to have been put before the First-tier Tribunal Judge and was not when, as we say, the only ground of appeal that was material, so far as the First-tier Judge was aware, was that arising under 245ZX(ha).
8. There may be circumstances where there is an obligation upon a Tribunal judge to consider other matters or other grounds for refusal if, but only if those are matters which clearly arise on the material produced. No judge can be expected to be familiar with all the detailed requirements, particularly these points based Rules. Apart from anything else, they change with monotonous regularity and they are far too complicated in any event, and we cannot in any way blame the First-tier Tribunal Judge for not going into those matters. It is not his job to trawl through the relevant Rules as the Secretary of State considers they should exist at any particular moment in time. That was a matter for her and the Home Office to raise and they did not. In those circumstances this appeal is dismissed.
9. In our view, in all the circumstances, unless there is any reason to doubt that the respondent is doing well and studying properly at his course, in all the circumstances I think it would be wrong not to allow him to continue to the end of it

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law material to the outcome of the appeal. We therefore do not set aside the decision.

The appeal of the Secretary of State is dismissed.

No anonymity direction is made.

Signed

Date 29 July 2015

Upper Tribunal Judge Goldstein

For and on behalf of Mr Justice Collins