



IAC-AH-LEM-V1

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

Appeal Number: IA/40251/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 31<sup>st</sup> July 2015**

**Decision & Reasons Promulgated  
On 10<sup>th</sup> November 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR MUHAMMAD USMAN ABBASI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: No appearance  
For the Respondent: Mr S Walker (HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Shergill, promulgated on 19<sup>th</sup> February 2015, following a hearing at Taylor House on 5<sup>th</sup> February 2015. In the determination, the judge allowed the appeal of Mr Muhammad Usman Abbasi under the Immigration Rules. The Respondent Secretary of State subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### The Appellant

2. The Appellant is a male, a citizen of Pakistan, who was born on 3<sup>rd</sup> June 1987. He appealed against the decision of the Respondent dated 19<sup>th</sup> September 2014 refusing his application for a variation of existing leave to remain in the UK as a Tier 4 (General) Student.

### The Appellant's Claim

3. The Appellant's claim is that he is below the maximum period of three years and should be allowed to study a "one year" course notwithstanding the bar on undergraduate courses that go for five years, rather than three years as permitted. He says that he did not join the HND course until 7<sup>th</sup> March 2012. This meant that he spent one year and eleven months and fourteen days studying rather than two years and one day.

### The Judge's Findings

4. The judge held that the Appellant could not have started the HND course any earlier than 5<sup>th</sup> March 2012 as that is the entry stamp on his passport which accompanied the application. The judge held that there was no reason to doubt that 7<sup>th</sup> March 2012 was his first day on the course as he claimed. (See paragraphs 11 and 12). The judge held that there was nothing in the guidance or the Rules to suggest that the case put forward by the Appellant was impermissible (see paragraph 14). The appeal is allowed on immigration grounds.

### Grounds of Application

5. The grounds of application say that the judge erred in failing to have regard to the Upper Tribunal judgment in **Islam (paragraph 245ZX(ha): five years' study) [2013] UKUT 608**. In this case it was held that the relevant rule required that time spent at degree level by the Appellant as a student under the pre-Tier 4 Rules had to be taken into account in calculating the maximum period of five years in paragraph 245ZX(ha).
6. Furthermore, the Upper Tribunal established that it is a period of leave and not the actual study which is the measure for calculating the period spent in the UK imposed by paragraph 245ZX(ha). Accordingly, the judge had simply misconstrued the Rules.
7. On 14<sup>th</sup> April 2015, permission to appeal was granted on the basis that, if one applied **Islam**, it was arguable that the appeal simply had to be refused under the Immigration Rules.
8. Furthermore, although the Notice of Appeal raised reliance upon Article 8 rights, this could only ever have been on the evidence, on the basis of a "private life". However, under Section 117A - D, the Appellant could not succeed because his immigration status was always precarious.

### Submissions

9. At the hearing before me on 31<sup>st</sup> July 2015, the Appellant was not in attendance. Neither, was any representative on his behalf in attendance. Nor, was any explanation given to the Tribunal for this non-attendance.
10. Mr Walker, appearing on behalf of the Respondent Secretary of State, submitted that the Appellant could not succeed on the basis of the Upper Tribunal's decision in **Islam** because that made it clear that it is a period of leave and not the actual study which is the measure for calculating the period of time spent in the UK imposed by paragraph 245ZX(ha). The judge had, in terms set out in the determination, had regard to the period of study (see paragraph 11), and this was impermissible. The appeal could not have been allowed under the Immigration Rules.

### Error of Law

11. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCA 2007) such that I should set aside the decision and remake the decision. It is plain that, if one were to apply the Upper Tribunal judgment in **Islam**, the Appellant could not succeed but because under the relevant Immigration Rule, it is the period of leave and not the actual period of study which is the measure for calculating the time spent in the UK. The Appellant's argument, on this basis, was doomed to failure. He could not succeed under the Immigration Rules.

### Remaking the Decision

12. I have remade the decision on the basis of the findings of the original judge, and the evidence before her, and the submissions that I have heard today. I am dismissing this appeal for the following reasons.
13. First, the Appellant cannot succeed, for the reasons I have already given above, under paragraph 245ZX because of the time that he has been in the UK.
14. Second, the Appellant cannot succeed under Article 8 ECHR rights because no evidence was put before the Tribunal, and none has been put before this Tribunal today, to show that "private life" existed. In point of fact, the Appellant's presence in the UK was always precarious.
15. Third, there is no evidence before me of sufficient substance to render it disproportionate to remove the Appellant (see **Patel [2013] UKSC 72** and **Naseem [2014] UKUT 25**). The appeal is dismissed.

**Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error on a point of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is dismissed.

No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

9<sup>th</sup> November 2015