



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/43014/2014;**

**Appeal Number:**

**IA/43015/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House, London  
Reason Promulgated  
On 20 May 2015**

**Decision and  
On 9 June 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**JAYABEN HEMANTKUMAR FATKAR  
HEMANTKUMAR MANOHARBHAI FATKAR**

Appellant

**and**

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

Respondent

**Representation:**

For the appellant: Mr Z Malik instructed by Mayfair Solicitors  
For the respondent: Mr S Kandola, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellants are married and are nationals of India. They appealed to the First-tier Tribunal against the decision of the Secretary of State dated 13 October 2014 to refuse the first appellant's application for leave to remain as a Tier 4 (General) Student and the second appellant's application for leave to remain as her dependant. Judge of the First-tier Tribunal Hussain dismissed the appeals. The appellants now appeal with permission to this Tribunal.

## **Background**

2. The appellants are nationals of India and arrived in the UK on 25 September 2009, the first appellant as a Tier 4 (General) Student and the second appellant as her dependant with leave to enter until 9 September 2010. Their leave to remain was extended on several occasions; the latest leave was due to expire on 27 January 2016. However on 4 July 2014 the appellants' leave was curtailed by the respondent because Khalsa College, where the first appellant was by then studying a Diploma in Hospitality and Tourism Management, had its licence revoked. The appellants applied for leave to remain on 5 September 2014 for the first appellant to study a Chartered Management Accountant course (CIMA) at the International School of Sikh Studies and the respondent refused that application on 13 October 2014.

3. The respondent refused the application on the basis that the first appellant had failed to meet the requirements of paragraph 245ZX (ha) of the Immigration Rules because she had previously been granted leave to study course at degree level or above for 3 years and 5 months. The respondent decided that, as the current application is to study a CIMA, an NQF level 7 course, until 18 September 2017, a grant of leave to study this course would result in her having spent more than 5 years in the UK as a Tier 4 (General) Student studying course that consist of degree level study or above.

4. The appellant appealed to the First-tier Tribunal on the ground that she did not begin to study courses at degree level or above until 2012 and that the sponsoring college made a mistake on the CAS as to the end date of the new course which meant that it appeared that she will go over the five year limit. She argued that the course ends on 20 April 2016 not 18 September 2017 which she said was a typographical error on the CAS. The First-tier Tribunal Judge found that the CAS had given the correct end date of the course as that was also the date on the conditional offer and that in any event he was prevented from considering taking new evidence into account by section 85A of the Nationality, Immigration and Asylum Act 2002. In these circumstances the First-tier Tribunal Judge found that the new course was to end on 18 September 2017.

5. As the appellant had confirmed in oral evidence that the various components of the Associate Degree in Business Management were all studies as part of the degree she completed at Khalsa College, the Judge found that the appellant had been studying at degree level for the Associate Degree in Business Management and the Diploma in Hospitality and Tourism Management which were level 6 courses. The Judge found that the appellant's credibility, and that of the representative from the International School of Sikh Studies, was damaged. The Judge accepted what the first appellant said in her letter dated 24 October 2014 (sent with her appeal notice) where she said that she had completed 41 months of level 6 courses prior to the commencement of the CIMA course. Given that

the course has an end date of 18 September 2017 that would take her over the 60 month/5 year threshold.

6. The appellants put forward three grounds of appeal to the Upper Tribunal. The first ground contends that the Judge erred in his interpretation of 'degree level' studies as required by paragraph 245ZX (ha) and defined in paragraph 6 of the Immigration Rules. It is contended that the appellant studied at level 4 and 5 before going on to study at level 6 in the third year of her Associate Degree in Business Management. It is therefore contended that the appellant has studied at degree level for 12 months and the proposed studies for 36 months will not exceed 5 years. The second ground contends that the First-tier Tribunal Judge erred in failing to appreciate that paragraph 245ZA (ha) does not provide for time previously spent as a 'student' (under paragraph 57 of the Immigration Rules ) in calculating the five year period. The final ground is that the First-tier Tribunal Judge erred in failing to consider the appellants' appeal under Article 8 of the European Convention on Human Rights.

7. Permission to appeal was granted by Designated Judge of the First-tier Tribunal Garratt who decided that the first two grounds of appeal were not arguable as the Judge's decisions were open to him on the evidence. However he decided that the Judge had arguably erred in failing to give any consideration to the human rights issues even though they had been raised in the grounds of appeal to the First-tier Tribunal.

### **The Law**

8. The relevant provisions of the Immigration Rules for the purposes of this appeal are as follows;

"6. In these Rules the following interpretations apply:

"degree level study" means a course which leads to a recognised United Kingdom degree at bachelor's level or above, or an equivalent qualification at level 6 or above of the revised National Qualifications Framework, or levels 9 or above of the Scottish Credit and Qualifications Framework.

Under Part 8 of these Rules, "post-graduate level study" means a course at level 7 or above of the revised National Qualifications Framework or Qualifications and Credit Framework, or level 11 or above of the Scottish Credit and Qualifications Framework, which leads to a recognised United Kingdom postgraduate degree at Master's level or above, or an equivalent qualification at the same level.

"foundation degree" means a programme of study which leads to a qualification awarded by an English higher education institution with degree awarding powers which is at a minimum of level 5 on the revised National Qualifications Framework, or awarded on a directly equivalent basis in the devolved administrations.

"primary degree" means a qualification obtained from a course of degree level study, which did not feature as an entry requirement a previous qualification

obtained from degree level 4 study. An undergraduate degree is a primary degree. A Masters degree that has a Bachelor degree as an entry requirement is not a primary degree.

A "UK recognised body" is an institution that has been granted degree awarding powers by either a Royal Charter, an Act of Parliament or the Privy Council. For the purposes of these Rules we will consider the Foundation Programme Office, South London Local Education and Training Board and the Yorkshire and Humber Strategic Health Authority as equivalent to UK Recognised Bodies.

...

"a UK Bachelors degree" means

- (a) A programme of study or research which leads to the award, by or on behalf of a university, college or other body which is authorised by Royal Charter or by or under an Act of Parliament to grant degrees, of a qualification designated by the awarding institution to be of Bachelors degree level; or
- (b) A programme of study or research, which leads to a recognised award for the purposes of section 214(2)(c) of the Education Reform Act 1988, of a qualification designated by the awarding institution to be of Bachelors degree level."

**"245ZX.** 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.

...

(ha) If the course is at degree level or above, the grant of leave to remain the applicant is seeking must not lead to the applicant having spent more than 5 years in the UK as a Tier 4 (General) Migrant, or as a Student, studying courses at degree level or above unless:

- (i) the applicant has successfully completed a course at degree level in the UK of a minimum duration of 4 academic years, and will follow a course of study at Masters degree level sponsored by a Recognised Body or a body in receipt of public funding as a higher education institution from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Scottish Funding Council, and the grant of leave to remain must not lead to the applicant having spent more than 6 years in the UK as a Tier 4 (General) Migrant, or as a Student, studying courses at degree level or above; or
- (ii) the grant of leave to remain is to follow a course leading to the award of a PhD and the applicant is sponsored by a Recognised Body or a body in receipt of public funding as a higher education institution from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Scottish Funding Council; or

(iii) the applicant is following a course of study in;

(1) Architecture;

(2) Medicine;

(3) Dentistry;

(4) Law, where the applicant has completed a course at degree level in the UK and is progressing to:

a. a law conversion course validated by the Joint Academic Stage Board in England and Wales, a Masters in Legal Science (MLegSc) in Northern Ireland, or an accelerated graduate LLB in Scotland; or

b. the Legal Practice Course in England and Wales, the Solicitors Course in Northern Ireland, or a Diploma in Professional Legal Practice in Scotland; or

c. the Bar Professional Training Course in England and Wales, or the Bar Course in Northern Ireland.

(1) Veterinary Medicine & Science; or

(2) Music at a music college that is a member of Conservatoires UK (CUK)"

## **Submissions**

9. At the outset of the hearing before me Mr Malik submitted that permission to appeal had not been refused on grounds of appeal one and two. He relied on the decision in Ferrer (limited appeal grounds; Alvi) [2012] UKUT 00304 (IAC) where the Upper Tribunal said at head note 2;

"Where the First-tier Tribunal judge nevertheless intends to grant permission only in respect of certain of the applicant's grounds, the judge should make this abundantly plain, both in his or her decision under rule 25(5) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and by ensuring that the Tribunal's administrative staff send out the proper notice, informing the applicant of the right to apply to the Upper Tribunal for permission to appeal on grounds on which the applicant has been unsuccessful in the application to the First-tier Tribunal."

10. Mr Kandola accepted that the relevant notices had not been sent out and that the appellants were not therefore barred from raising those grounds of appeal before me. I accept that in this case there was no notice sent out informing the appellants that permission to appeal was refused in respect of grounds one and two and that I cannot therefore treat permission as having been refused on those grounds.

11. Mr Malik accepted that there was no evidence before the First-tier Tribunal or before me on which the Article 8 appeal could be allowed and he said that he would not pursue that ground of appeal. He also accepted

that ground two was a bad point and he would not pursue that either. The only ground still before me therefore is the first ground.

12. Mr Malik submitted that the first ground relates to the construction of paragraph 245ZX (ha). He relied on the authorities of Syed & Anor, R (on the application of) v Secretary of State for the Home Department [2014] EWCA Civ 196 and YS and SJ ('Degree level' study) Mauritius [2006] UKAIT 00094. He submitted that the studies being undertaken by the appellant in Khalsa College from 2010-2012 were not 'degree level' studies as they would not have led to a qualification by a body that was empowered to award a degree. However he submitted that from 2012-2013 the appellant was studying at level 6 and therefore is the only year that counts as in previous years she cannot be said to have been studying at level 6 or above.

13. Mr Kandola submitted that the decision in Syed should be treated with caution in this appeal as it relates to ACCA qualifications and whether they come within table 10 of paragraph 245F of the Immigration Rules which relates to Tier 1 (Post-study work) Migrants. He referred to the last part of paragraph 26 of the decision in Syed and submitted that the issue of the awarding body is not relevant to the issue of an equivalent qualification of level 6 or above and therefore not relevant in this appeal. He submitted that the Judge's findings in relation to credibility were open to him and that they led to the finding that the appellant did not meet the requirements of paragraph 245ZX.

### **Discussion and conclusions**

14. The cases relied on by Mr Malik do not deal with the issue at the heart of this appeal. The decision in YS and SJ relates to the definition of 'a course of study at degree level or above' in paragraph 60 (i) (b) which is no longer in force and paragraph 6 of the Immigration Rules in that context. The decision was concerned with degree level studies and the awarding body and, in finding that Dublin Metropolitan University is not a body falling within section 214 of the Education Reform Act 1988, the Tribunal was clearly interpreting the phrase 'recognised UK degree' in the first part of paragraph 6 of the Immigration Rules. The Tribunal concluded that a 'recognised UK degree' can only be awarded by an institution capable of awarding degrees recognised by the 1988 Act.

15. The Court of Appeal in Syed was concerned with the interpretation of table 10 of Appendix A and the phrase 'UK recognised bachelor or postgraduate degree' which is defined in paragraph 6 above. In paragraph 26 the Richards LJ said

"... "recognised" in Table 10 fits well with the view that the required qualification is an actual degree awarded by a degree-awarding institution. "Recognised" appears in a number of places in the definitions in paragraph 6. The definition of "degree level study", namely "a course which leads to a recognised United Kingdom degree at bachelor's level or above, or an equivalent qualification at level 6 or above of the revised National

Qualifications Framework", draws a distinction between a recognised degree on the one hand and an equivalent qualification on the other hand: it is the recognised degree, not the equivalent qualification, that features in Table 10. The definition of "UK recognised body" refers to an institution with degree-awarding powers, not to institutions awarding equivalent qualifications. Similarly, the second limb of the definition of "a UK Bachelors degree" refers to a "recognised award" for the purposes of the Education Reform Act 1988 and by that route refers to awards by degree-awarding institutions, not to the award of equivalent qualifications. It is all of a piece."

16. The appellant in the present case claims to have been awarded an 'Associate Degree' by the Institute of Commercial Management through Khalsa College. It is not clear whether this is a degree or an equivalent qualification. Even if the qualification obtained by the appellant in June 2013 is a degree (although she described it as an Associate Degree) there is no evidence before me, nor was there before the First-tier Tribunal Judge, that the Institute of Commercial Management, the awarding body, is not an institution capable of awarding degrees recognised by the 1988 Act.

17. The first question in the instant appeal is therefore whether the Associate Degree in Business Management undertaken by the appellant at Khalsa College London between October 2010 and June 2013 is a *'course which leads to a recognised United Kingdom degree at bachelor's level or above'* or *'an equivalent qualification at level 6 or above of the revised National Qualifications Framework'* within the definition of 'degree level study' in paragraph 6. The appellant herself referred to this course as Level 6 in her letter of 24 October 2014 and in her witness statement of 14 January 2014 the appellant described the course as an *Associate Degree in Business Management*. The CAS describes the appellant's previous course as QCF/NQF level 6 and states that the new course is at level 7.

18. There was no evidence of the final award before the First-tier Tribunal Judge or before me. The only evidence is two certificates, one for a Certificate in Business Studies awarded on 20 August 2012 by the Institute of Commercial Management and a Diploma in Business studies awarded by the same Institute in August 2013, there is also a transcript of academic results in relation to the Diploma in Business Studies indicating a period of studies from June 2011 until June 2013. The CAS assigned for that course on 18 October 2010 stated that it was being issued for an Associate Degree in Business Management (ICM) UK at level 6 and that the course was to start on 25 October 2010 and finish on 28 June 2013. The appellant herself clarifies in her statement of 24 October 2014 that this is a level 6 Associate Degree in Business Management. This evidence clarifies that the appellant was studying towards a level 6 qualification at Khalsa College and was thus in 2010-2013 studying a course or courses which lead to a degree or equivalent qualification. I reject Mr Malik's submission that it did not matter what level the appellant believed she was studying at, her statement clarified and confirmed the documentary evidence.

19. Taking into account the CAS and the appellant's own evidence the Judge was entitled to conclude that the studies undertaken by the appellant

during the period from 2010 to 2013 was leading to an equivalent qualification at level 6 or above. That finding meant that the Judge was bound to conclude that the new course - which was to run from October 2014 until September 2017, would take the appellant over the five years permitted by paragraph 245ZX (ha) of the Immigration Rules.

Conclusion:

The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

Signed  
June 2015

Date: 5

A Grimes  
**Deputy Judge of the Upper Tribunal**