



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/07097/2012

THE IMMIGRATION ACTS

Heard at Field House
On 3 September 2013
Prepared 3 September 2013

Determination Promulgated
On 18 September 2013

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

JOYALBHAI EDWINBHAI PARMAR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Patel, Legal Representative of Visa Limited
For the Respondent: Mr G Saunders, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of India born on 29 October 1985 appeals, with permission, against a determination of Judge of the First-tier Tribunal Levin who in a determination promulgated on 1 June 2012 dismissed the appellant's appeal against

a decision of the Secretary of State to refuse him an extension of stay under the Tier 4 (General) Student Rules.

2. The reason for the refusal was that the grant of leave which the appellant was seeking would lead to his having spent more than three years in the UK as a Tier 4 Migrant studying courses that did not consist of degree level study. The appellant's course for which he requested an extension of stay was below degree level.
3. The notice of refusal of 6 March 2012 stated:-

“Due to the fact that you have previously studied a Diploma in Business Management at London College of Accountancy and Finance from 15 September 2009 until 28 October 2011 and your current application is in respect of a course that is below degree level, NQF level 5 CIMA from 24 February 2012 until 28 February 2014, the Secretary of State is not satisfied that a further period of leave in this category can be granted.”

4. The grounds of appeal refer to the fact that the appellant had made an application for a Tier 4 (General) Student visa and went on to say that he had initially been granted entry clearance to study a Diploma in Business Management from 15 September 2009 to 28 October 2011. They stated:

“At the time of this application there were different Rules applicable at the time. At that time there was no such Rule wherein students cannot be granted leave for more than 3 years to study below degree level courses. The new Rule introduced regarding the maximum 3 years' stay was introduced around July 2011 time. By this time I was nearly on the verge of finishing this above-mentioned course. Hence, I did not have enough time to make any changes or even expedite my current course so as to be able to take up some other course to match up for the new Rules.”

5. It was argued that based on his qualifications “no reputed college or institution” would have granted the appellant admission to a course above degree level and that the decision was in violation of his “rights to fairness”. They referred to a number of cases including **Thakur (PBS decision - common law fairness) Bangladesh [2011] UKUT 00151 (IAC)** and **Patel (revocation of sponsor licence - fairness) India [2011] UKUT 00211 (IAC)** and asserted that the appellant had been rejected “on the basis of a Rule which does not apply to my application”.
6. The appellant elected to have his appeal determined on the papers and in these circumstances it came before Judge Levin on 23 May 2012.
7. Judge Levin noted the appellant's immigration history and the terms of the notice of appeal. He also referred to the terms of paragraph 85A of the Nationality, Immigration and Asylum Act 2002 noting the restricted evidence which could be considered by him in an appeal against an immigration decision.
8. The Judge noted that the change in the Rules had taken place on 28 November 2011 and that that was two months before the appellant made the application.

9. The Judge noted moreover that the confirmation of studies submitted by the appellant stated the appellant had been accepted for an NQF level 5 course at the Chartered Institute of Management Accountants (CIMA) and therefore found that it was below degree level. With regard to the section in the CAS headed "Course details" he noted that it stated the appellant had successfully completed all the requirements towards a Diploma in Business Management which according to the National Qualifications Framework was a level 4 qualification and that therefore the appellant was eligible to progress to a level 5 qualification. He stated therefore that it was clear that the appellant's previous course of study had also been below degree level.
10. Having noted from the CAS the course which the appellant wished to undertake lasted from February 2012 until 28 February 2014 he found that the length of the course was just over four years and that given that the appellant had studied for two years for the NVQ level 4 qualification, he found that the course the appellant was presently seeking to undertake would result in his having spent more than three years in Britain as a Tier 4 Migrant studying courses at lower than degree level. He therefore found that the respondent had been correct to refuse the application.
11. He then considered the rights of the appellant under Article 8 of the ECHR but concluded that the decision did not infringe the appellant's rights under Article 8 of the ECHR.
12. The grounds of appeal in the Upper Tribunal argued that the qualification which the appellant wished to take consisted of NVQ levels 5, 6 and 7 and stated that to determine where a student would start a qualification depended on the entry requirement. There were different entry routes to the CIMA qualification and as the appellant had not qualified for exemption he had to start at level 5. They argued in fact that the course which the appellant would be undertaking would incorporate levels 5 to 7, that the appellant would start at level 5 which he expected to complete within six to nine months. The Immigration Judge was wrong, it was argued, to conclude the appellant would spend the entire duration of study at level 5 and that he would spend more than three years on courses that did not consist of degree level study.
13. Permission to appeal was granted by Judge Vaudin d'Imécourt in the First-tier Tribunal on 29 June 2012. In September 2012 Upper Tribunal Judge Chalkley, having noted that a witness statement and copies of e-mails and documents had been submitted by the appellant, stated that the appeal would be placed in a paper list as soon as the appellant's representatives confirmed that copies of all documents were sent to the respondent. He stated that if no reply was received by 20 October 2012 the matter would be set down for an oral hearing.
14. No further documents having been served the appeal was set down for an oral hearing before me on 3 September 2013.

15. At the hearing of the appeal Mr Patel referred me to an academic transcript from the London College of Accounting and Finance stating that the appellant had passed a number of courses between September 2009 and 28 October 2011. He stated that they were evidence of the fact that the appellant had gained his initial qualification. There was no other evidence of his qualification.
16. He confirmed that the appellant had done nothing since finishing his initial studies in November 2011 because the appellant had not been entitled to study as his application for extension of stay as a student had been refused. He went on to argue that the CIMA course was at levels 5, 6 and 7 and therefore part of the course was at degree level. He pointed out in a letter dated 17 October 2012 that the London International College of Management (where the appellant had intended to study) had been removed from the Register of the Sponsors for Tier 4 and he was not sure whether the licence of the college had been revoked or suspended as that information was not available on the UKBA website. It is apparent that the college is now closed. He referred to papers from the CIMA website which set out the "exemptions policy" and a document referring to the structure of the CIMA qualification. They had referred to the various papers which would need to be taken.
17. Mr Saunders pointed out that the CAS did not indicate that the course was anything other than a level 5 course.
18. I have considered all the papers before me and of course the determination of the Immigration Judge. It would only have been a material error of law in the determination if the judge had ignored evidence which was before him or indeed in the grounds of appeal. It is of note that the grounds of appeal before the judge did not argue that the course which the appellant wished to undertake was a course at degree level or indeed that part of the course was at degree level. Rather it was argued in the grounds of appeal that the appellant's rights under Article 8 were infringed by the decision and that the change in the Rules was unfair.
19. It is only now that it has been argued that the course is in part at degree level. The reality is however that neither the CAS which was submitted to the Home Office or was before the Immigration Judge indicated that that was the case. It clearly states that the course is for two years and the level is level 5. The structure of the CIMA qualification which Mr Patel had downloaded from the website again does not state at what level the various parts of the qualification are.
20. I consider that the judge reached a clear and correct decision on the basis of the evidence before him. He had nothing before him to indicate that the course which the appellant wished to undertake was at anything other than level 5. It was not argued in the grounds of appeal that the Judge had erred in his consideration of the Article 8 rights of the appellant.

21. There was therefore no material error of law in the determination and the determination of the Immigration Judge shall therefore stand.

Decision

This appeal is dismissed.

Signed

Date

Upper Tribunal Judge McGeachy