



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

Appeal Number: IA/00496/2014

THE IMMIGRATION ACTS

Heard at Field House, London

Determination

On 9 October 2014

Promulgated

On 21 October 2014

**Before
DEPUTY UPPER TRIBUNAL JUDGE ROBERTSON**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**MS UMMAY SALMA VHUYAN
ANONYMITY DIRECTION NOT MADE**

Respondent

Representation:

For the Appellant: Mr S Kandola, Presenting Officer

For the Respondent: Mr M Islam, Legal Representative from A1 Law Chambers

DETERMINATION AND REASONS

Introduction

1. The Appellant in this appeal was the Respondent at the First-tier Tribunal hearing on 28 July 2014 before Judge R J N B Morris. However, for ease of reference, the Appellant and Respondent are hereafter referred to as they were before the First-tier Tribunal. Therefore Ms Vhuyan is referred to as the Appellant and Secretary of State is referred to as the Respondent.
2. The Appellant, a female citizen of Bangladesh, applied for leave to remain as a Tier 4 (General) Student Migrant pursuant to para 245ZX of HC 395,

as amended (the Immigration Rules). Her application was refused pursuant to 245ZX(h) because, due to her previous grants of leave as a Tier 4 student, if leave was granted pursuant to her current application, she would have spent more than three years in the UK as a Tier 4 student since the age of 18 studying courses which consisted of below degree level study. She appealed and her appeal was allowed by Judge Morris, who found that the periods of leave that fell to be counted were those during which the Appellant was actually studying and she had not in fact been engaged in study throughout the periods of leave she had been granted.

3. The Respondent sought permission to appeal on the very narrow point that it was provided in **Islam (Paragraph 245(ha): five years' study: Bangladesh) [2013] UKUT 608 (IAC)** that all Tier 4 leave during which the Appellant was present in the UK fell to be counted towards the 36 month total specified under paragraph 245ZX (h). It was submitted that **Islam** provided that "It is the period of leave and not the actual study which is the measure for calculating the period of leave spent in the UK imposed by para 245ZX (ha)."
4. Permission was granted on the basis that it was arguable that the Judge had misinterpreted the relevant rule.
5. A Rule 24 response was not submitted on behalf of the Appellant but Mr Islam submitted that the law had been correctly applied by the Judge.

The Hearing

6. At the outset of the hearing, I asked the parties to identify the periods of leave that were under consideration. They agreed the following:
 - a. The Appellant was granted Tier 4 leave for the period 29 September 2010 until 31 January 2012. She arrived in the UK on 1 October 2010 and returned to Bangladesh due to ill health on 18 February 2011 and her leave was cancelled. She was therefore in the UK as a Tier 4 Migrant for 4 months and 17 days.
 - b. She was issued with a visa as a Tier 4 Migrant for the period 7 September 2012 until 17 October 2013. She entered the UK on 7 September and has remained here ever since.
 - c. Her current application, made on 17 October 2013, was for leave to remain as a Tier 4 Migrant for a course which was due to finish on 24 July 2015.
7. Mr Kandola submitted that taking all the periods of leave into account, the Appellant would have been in the UK as a Tier 4 Migrant for over 36 months.
8. I note that the aggregate period of leave within the UK as a Tier 4 Migrant would be 3 years, 4 months and 12 days (4 months and 17 days plus 2 years 11 months and 15 days). However, **Islam**, at paragraph 13, expressly referred to the need to exclude the pre- and post-course leave

referred to at paragraph 245ZY (b) for the purposes of calculating leave. I asked Mr Kandola whether the periods referred to at paragraph 245ZY (b) had been factored into the calculation so that pre and post study leave was not counted. He stated that according to the terms of 245ZY (b), if the paragraph was in force at the date of decision, they would need to be factored in and if they were, he accepted that the Appellant would not have exceeded the permitted 36 months leave set out in paragraph 245ZX(h). His only query was whether the provisions of paragraph 25ZY(b) were in force at the relevant time.

9. I have considered the various amendments to the Immigration Rules and paragraph 245ZY(b) was in force at the date of decision. The relevant paragraphs were inserted on 31 March 2009, have been amended over time but have in substance remained the same ever since. On the basis that Mr Kandola accepted that the effect of not counting pre- and post-study leave meant that the Appellant had not spent more than 36 months in the UK as a Tier 4 Migrant pursuant to the provisions of paragraph 245ZX(h), I find that there are no material errors of law in the determination of Judge Morris.

Decision

10. The determination of Judge Morris contains no material errors of law. Her decision must therefore stand.

Anonymity

11. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and we see no reason why an order should be made pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date: 20 October 2014

Manjinder Robertson
Sitting as Deputy Judge of the Upper Tribunal

TO THE RESPONDENT
FEE AWARD

I have considered whether to make a fee award. I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011). As the Respondent's appeal has been dismissed, the decision of Judge Morris as to the fee award shall also stand.

Signed

Dated: 20 October 2014

M Robertson
Deputy Upper Tribunal Judge