



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

Appeal Number: IA/00781/2014

THE IMMIGRATION ACTS

Heard at Field House

On 7 October 2014

Determination

Promulgated

On 13 October 2014

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

SANGITA AWALE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Othieno, Apex Solicitors

For the Respondent: Mr P Deller, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nepal who applied for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant under the Points Based System. It was refused by the respondent in a decision dated 10 December 2013.
2. In her decision the Secretary of State set out that grants of entry clearance or leave to remain for Tier 4 applicants to undertake studies at degree level or above had to be limited to a maximum period of five years (60 months). There were exceptions for that but none of the exceptions

are said to have applied in the appellant's case. Accordingly the issue before the judge was whether the appellant had completed courses of study which together with her proposed course would exceed five years. The judge did not approach the appeal in this way and appears to have focused on whether until 19 May 2009 the appellant had studied courses below degree level the duration of which added together exceeded three years.

3. There was a considerable amount of confusion as to what was degree level or above but it appears to have been settled in written material that was provided to the judge after the hearing, and which the judge agreed to take into account that, the definitions are to be found within the Immigration Rules.
4. Paragraph 6 of the Immigration Rules provides that degree level study means a course which leads to a recognised United Kingdom degree at Bachelors level or above or an equivalent qualification at level 6 or above of the revised National Qualifications Framework (NQF). Similarly under paragraph 8 of the Rules postgraduate level study means a course at level 7 or above of the revised NQF which leads to a recognised UK postgraduate degree at Masters level or above or an equivalent qualification at the same level. Thus in order to assess whether the appellant was studying at degree level or above the courses had to be assessed by reference to whether the courses she was pursuing were at level 6 or level 7.
5. The history of the appellant's studies does not seem to be in doubt and is recorded in the determination by the judge. The relevant periods of level 6 or above are found in paragraph 6, paragraph 9 and paragraph 11. Paragraph 6 deals with a course which was to have commenced and did in fact commence on 17 April 2006 and was due to end on 28 April 2009. It was a course which we have seen by reference to a letter was for a BSc in Computer and Information Systems at level 6. It was a three year course and was in my judgment without doubt a degree level course. The fact that the college folded only at a stage halfway through the course (which meant that the appellant was only able to be awarded a diploma) does not affect the course that she was studying because it was at all times a degree level course at level 6 or above.
6. She then went on to study for a period between 11 June 2007 and 18 January 2008 at Middlesex College. There again, that was a BSc in Computer and Information Systems and was at level 6. That college too folded but, for the reasons I have already stated, that does not matter. She did not receive a recognised qualification at all from those courses of study but that does not mean she was not studying at a degree level course. Indeed, to reduce the argument to absurdity, if an individual fails in her achievements while studying, it cannot properly be said that, as a result, she was not studying at all.

7. However, the evidence establishes that she was pursuing a degree level course for a period between 17 April 2006 and 18 January 2008, a period of about 21 months. It is conceded that between 1 February 2010 and 29 July 2011 she was studying at Kaplan Financial at level 7. Level 7 is postgraduate level. Accordingly there was a further period of something like 18 months when the appellant was involved in studies at degree level or above, making 39 months in total to July 2011. There was a final period recorded in paragraph 11 of the determination which set out that between 18 November 2013 and to date she has been studying at the City of London Academy at a level 7 BTEC extended diploma. Level 7 is classified as postgraduate. This course is due to end on 27 February 2015, a further 15-month period of post-graduate study.
8. The courses to which the Judge referred in paragraphs 6, 9 and 11 total something like 54 months.
9. I adjourned the hearing on 16 July 2014 because, at paragraph 8 of the determination, the appellant told the Judge that there was a further period of study at Kaplan Financial between 28 January 2008 and 19 May 2009 when she was studying at levels 5 and 6. It follows that if the period she was studying at level 6 exceeded six months, her present course would exceed the permitted 60 month period. I gave these directions, amongst others:

The resumed hearing is limited to a consideration of whether, in the period between 28 January 2008 and 19 May 2009, the appellant was studying at Kaplan Financial at level 5 or 6 whilst she followed a course with the Chartered Institute of Management Accountants and, if at level 6, the period of study at that level.

10. By letter dated 29 August 2014, Kaplan Financial wrote that the appellant and studied a CIMA course at the following levels:
 - 28 January 2008 to 20 May 2008 at level 4;
 - 29 July 2008 to 25 November 2008 at levels 4 and 5;
 - 27 January 2009 to 19 May 2009 at level 5.
11. All of these courses are at below degree level, notwithstanding what the appellant told the Judge as recorded in paragraph 8 of the determination.
12. I found that the judge made material error on a point of law in failing to approach the case in the way that I have outlined above and therefore did not properly consider whether the courses of study which the appellant has been embarked upon were in violation of the limitation placed upon her that she should not be involved in studies at degree level or above for a period that did not exceed five years.
13. In re-making the decision, the appellant is entitled to a finding that she had completed courses of study which together with her proposed course

would *not* exceed five years. The reason put forward by the respondent for refusing the application is not made out. Accordingly, the appellant's appeal is allowed. The effect of this decision is to sanction the course of studies for a BTEC extended diploma that the appellant is now pursuing which is due to finish on 27 February 2015.

DECISION

- (1) The First-tier Tribunal Judge made an error on a point of law and his decision is set aside.
- (2) I re-make the decision allowing the appellant's appeal against the decision that the course proposed by the appellant would exceed 5 years of post-graduate study, taken together with her previous periods of post-graduate study.
- (3) The appellant met the requirements for further leave to remain in relation to the course proposed by the appellant which is due to end on 27 February 2015.

ANDREW JORDAN
UPPER TRIBUNAL JUDGE
10 October 2014