



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

Appeal Numbers: IA/13799/2013
IA/13805/2013
IA/13807/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 22nd January 2014**

**Determination
Promulgated
On 27th January 2014**
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Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**NINON RAISSA ABRO
PLACIDE NICAISE AMANY KOFFI KANAN
CHRIST-EPHRAIN ASHER AMANY**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Youssefian of DJ Webb & Co Solicitors
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellants are citizens of the Cote d'Ivoire born on 13th December 1977, 4th January 1975 and 19th May 2009 respectively. The first Appellant arrived in the UK with leave to enter as a student with a visa valid from 30th March 2004 to 31st January 2005 and was subsequently granted successive periods of leave until 28th February 2013. The second and third Appellants had leave in line.
2. On 22nd February 2013 she made a combined application for leave to remain as a Tier 4 (General) Student Migrant under the points-based system and for a biometric residence permit.
3. Paragraph 245ZH(ha) provides that if a course is at a degree level or above the grant of leave to remain that the Appellant is seeking must not lead to her having spent more than five years in the UK as a Tier 4 (General) Student Migrant or as a student studying courses at degree level or above unless certain exceptions apply, none of which are relevant to the Appellant.
4. The judge wrote as follows:

“Degree level is NQF Level 6. The Appellant has applied to do a CIMA course which is at level NQF Level 7 and of twelve months' duration. The Respondent has listed the other relevant courses as a BA Hons in business management from September 2004 to April 2007, a Master of Business Administration 31.8.2010 to 31.10.2012. The total length is 57 months. If the above courses are all at degree level or above, the CIMA course which is one year in length will take the length of studies over five years (60 months). The Appellant argues that her BA was a top-up to her HND and that the HND was below NQF Level 6 and should not be counted. The Respondent's case is that the HND is part of the degree course and is counted.

The normal length of a Bachelors degree is three years. By doing an HND the Appellant was able to complete her degree by just studying for an additional one year. I find that the HND was part of the degree and the length of the total studies HND and degree top-up course should be counted. It would not be logical or fair that someone who went through the HND and top-up route to a degree would be able to study for a longer period in the UK than someone who had just studied for a degree when the length of studies were the same length.”

5. On that basis she dismissed the appeal.
6. The Appellant appealed against that decision and permission to appeal was initially refused by Judge Ford on 6th November 2013. Upon renewal to the Upper Tribunal it was granted by Upper Tribunal Judge Warr on 5th December 2013.

The Hearing

7. At the hearing Mr Duffy said that he had been able to take instructions and he agreed that the challenge to the decision was correct. The Respondent accepted that the HND course was below degree level and accordingly the judge was in error. The decision should be set aside and remade.
8. He said that the Respondent no longer relied upon the original refusal but raised the question as to whether the Appellant might fall foul of Rule 245ZX(h) which states that, if the course is below degree level, the grant of leave to remain the applicant is seeking must not lead to the applicant having spent more than three years in the UK as a Tier 4 Migrant. However, on reflection he accepted the point made by Mr Youssefian that 245ZX(h) does not apply because the course that the Appellant is intending to study is above and not below degree level.

Decision

9. The original judge erred in law. Her decision is set aside and is remade as follows. The Appellant's appeal is allowed.

Signed

Date

Upper Tribunal Judge Taylor