



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

Appeal Number: IA/34194/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 26 September 2014**

**Determination**

**Promulgated**

**On 23 October 2014**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**MUHAMMAD MOBEEN**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Z Awan, Solicitor from Mayfair Solicitors

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is an appeal against the decision of the First-tier Tribunal dismissing the appellant's appeal against a decision of the respondent to refuse the appellant leave to remain in the United Kingdom as a Tier 4 (General) Migrant under the points-based system.
2. According to the Decision and Reasons dated 5 August 2013 the appellant had


"failed to provide certificates in support of your application, there is also a gap of more than 28 days between the end of your current leave which expired on 25 May 2013 and the start date of your new course which commenced on 12 August 2013 as detailed on your Confirmation of Acceptance for Studies (CAS) dated 2 August 2013.

It has therefore been decided that you do not meet the requirements and no points have been awarded for your CAS."

3. Essentially the First-tier Tribunal agreed with the Secretary of State and dismissed the appeal.
4. The grounds supporting the application for permission to appeal complain that the Tribunal had not followed the decision of the Court of Appeal in Qi (Pakistan) v SSHD [2011] EWCA Civ 614. There the Court of Appeal determined that an application made while the appellant had leave was not to be refused because the proposed course did not start within 28 days of the lapse of the leave the appellant enjoyed before he made his application because that leave was extended by operation of section 3C of the Immigration Act 1971. The course did commence within 28 days of the lapse of the thus extended leave. The essential point is that the appellant was in the United Kingdom with leave and that leave lapsed on 25 May 2013. Before 25 May 2013 he applied to attend a course that started on 12 August 2013 which was a gap of more than 28 days after 25 May 2013. It was the appellant's case that his leave had been extended by reason of his making the application and the course did start within 28 days of the decision being made on 5 August 2014.
5. When I read the papers before the hearing I thought that the appellant was correct on this point and I was a little surprised to find the Rule 24 notice suggesting to the contrary. However, the notice did not refer to any authority and did not comment on the decision in Qi. Mr Tarlow conducted himself professionally but was not able to construct an argument that the decision of the Court of Appeal in Qi was explained incorrectly in the grounds or otherwise did not support the result that the appellant urged.
6. However this did not solve the appellant's difficulties. He had not proved his competence in the English language in the required way. It is completely irrelevant that he may have excellent command of the English language. The requirement is to produce the certificate and he did not.
7. Mr Awan tried hard to persuade me that the need for a certificate was satisfied by similar requirements being set out in the form CAS. He drew my attention to paragraph 245AA(d) of HC 395 which permits (it does not oblige) the respondent to contact the applicant or his representative to request the correct documents if certain circumstances apply. The appellant relied on 245AA(d)(iii) which applies when the document does not contain all the specified information but the missing information was verifiable from documents already submitted.
8. Mr Awan argued that this applies because it was apparent from the CAS that the appellant had the necessary language skills. However, and as Mr Awan correctly drew to my attention, paragraph 245AA(c) makes it plain that documents will not be requested where a specified document has not been submitted, for example an English language certificate is missing.
9. I am satisfied that subparagraph (d) of paragraph 245AA is not intended as a way of getting round the requirement to produce a particular document but is a possible lifeline in a small number of cases where the "right" document has been produced but there is something "wrong" with it. The Rule does not bear the meaning urged on me and does not assist this appellant. He was required to produce the document and did not.

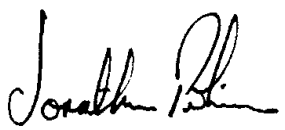
10. Mr Awan referred in his submissions to the case of [Pokhriyal v SSHD \[2013\] EWCA Civ 1568](#). I misheard the case name and, at the request of my clerk, Mr Awan kindly send me the correct citation by e-mail with a copy to Mr Tarlow. I did not find that this helped the appellant. It concerned an appellant who relied on a certificate that was not satisfactory. The Court of Appeal decided that the respondent should have given the appellant a chance to make good the deficit but it does not show that the respondent should have asked for a certificate that was not included.
11. Mr Awan also submitted that the case had not been considered with reference to Article 8 of the European Convention on Human Rights but as he was not able to show how the appeal could possibly have been allowed responsibly with reference to that Article this did not take matters any further.
12. It is immensely frustrating for appellants who think they could have satisfied the requirements of the Rules if they had been better organised in the presentation of their application to find they have not only been refused permission but that the error that cannot be corrected on appeal. I find this is such a case and there is nothing I can do to assist him.
13. I find that the First-tier Tribunal did err in one part of the determination but it was still right to dismiss the appeal.
14. No material error has been established. It follows that I dismiss the appeal against the First-tier Tribunal's decision.

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal



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Dated 22 October 2014



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