



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

Appeal Number: IA/07482/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 26 February 2015**

**Decision & Reasons
Promulgated
On 12 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

**SAIF HASIB
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Acharjee, Solicitor

For the Respondent: Miss J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I will refer the parties in this decision by their descriptions in the First-tier Tribunal notwithstanding that their roles are reversed in this Tribunal.
2. The appellant is from Bangladesh and his date of birth was 1 January 1991. He entered the UK as a student. The respondent refused an application under the points-based scheme but it was subsequently renewed and, following an appeal hearing before Judge Elson (the

Immigration Judge) on 12 September 2014, the appeal against the respondent's refusal of further leave to remain in the UK was allowed. The reason for the Secretary of State's refusal was that the appellant had not complied with the terms and conditions of his entry into the UK. One such condition was introduced by Section 50 the Borders, Citizenship and Immigration Act 2009 ("Section 50"). That section allowed the Secretary of State to insert a condition where leave had been given before the passing of that Act. One such condition is that an appellant is required to complete his studies at a particular institution. It appears that in this case the appellant was required to complete his studies at Icon College, the first institution he attended. It was a condition of his leave to enter the UK that he actually completed his course at that college.

The hearing

3. According to Miss Isherwood who appeared for the respondent at the Upper Tribunal hearing, the appellant only completed 6.9% of the total available course work in Icon College. He was subsequently found to be attending Ambassador College in apparent breach of the terms of his leave and that resulted ultimately in the curtailment of his leave. No issue is taken before me over the validity or extent of the appellant's appeal rights. Therefore, I will assume that the appeal has been validly brought.
4. I considered this matter at a hearing on 22 December 2014, at which there was different representation for the respondent. I considered that there was a material error of law but that it was appropriate to direct a further hearing at which proper analysis of the facts could be undertaken before the Tribunal ought to come to the conclusion that the studies that the appellant embarked on in Ambassador College were not in fact supplementary studies. The issue before me is: whether the appellant is in breach of the terms of the sponsorship licence requirements by effectively giving up his course at Icon College and starting a course at Ambassador College?
5. Although I allowed the parties to call any supplementary evidence that was necessary to deal with any material developments since the original decision which might affect the ultimate outcome, they did not in fact seek to do so.
6. I have heard submissions by both representatives at the convened hearing. Miss Isherwood explained the statutory background to me so as to understand the context of Section 50. She said that where an appellant wishes to change the course he is on he needs to make a fresh application. She referred me to the case of **Bhimani [2014] UKUT 516**, a decision of Judge Allen in Upper Tribunal. That case supports the proposition that she advances.
7. In the light of the evidence that the appellant failed to complete his course of study at the first institution, Icon College, and evidence that he had in

fact changed to a different institution, undertaking an identical or very similar course, Miss Isherwood submitted that it was quite clear that what had actually happened is that the appellant was not embarking on supplementary studies, as permitted by the terms and conditions of his licence, but had actually embarked on a totally new course for which he would have to make a fresh application.

8. In support of the appellant's case Mr Acharjee referred me to the guidance that the respondent had issued. He pointed out that it was wider than the Rules appeared to suggest. Therefore, he pointed out, the supplementary course may be embarked on without the need for permission from a Tier 4 Sponsor. The only limitation, he said, was that the supplementary course did not in any way hinder an appellant's studies on the main course.
9. Following the above submissions the question before the Upper Tribunal may be summarised as: whether the course that the appellant signed up to at the Ambassador College was supplementary to his course at Icon College or had it in fact become his main course?
10. Mr Acharjee also referred me to the favourable credibility findings of the First-tier Tribunal and said that they were sustainable. However, as I had pointed out in my earlier decision, I do not intend to interfere with the fact findings of the First-tier Tribunal.

Conclusions

11. Having carefully considered the matter I have concluded that Section 50 places a prohibition on the appellant embarking on a replacement course of study without making a fresh application. That is clear from the section itself and from the case of **Bahimi** to which I have referred.
12. It is unfortunate that the appellant finds himself in this position, possibly through no fault of his own. However, he obtained entry clearance for a particular course. The only way he can change to a different course is to make a fresh application. The first college, Icon College, seems may have withdrawn sponsorship in this case and the appellant did not inform the Secretary of State or make the necessary application before embarking on a very similar course at Ambassador College. I find undertaking this second course to be a breach of the requirements of his leave in that it could not clearly be said to be supplementary to the original course.

Notice of Decision

13. Following my finding that the First-tier decision made a material error of law, following the convened hearing, I have decided that the decision of the Secretary of State was lawful.

14. Accordingly the respondent's appeal against the First-tier Tribunal decision is allowed and I remake the decision which is to reinstate the Secretary of State's decision to dismiss the appeal.
15. There was no application for a fee award before the First-tier Tribunal and I make no fee award.

Signed

Date **26 February 2015**

Deputy Upper Tribunal Judge Hanbury