



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

Appeal Number: IA/17172/2014

THE IMMIGRATION ACTS

**Heard at Field House
On the 12th May 2015**

**Decision & Reasons Promulgated
On the 28th May 2015**

Before

**LORD MATTHEWS, SITTING AS AN UPPER TRIBUNAL JUDGE
DEPUTY UPPER TRIBUNAL JUDGE PARKES**

Between

**MR MUHAMMAD ALI KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No Appearance

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Muhammad Ali Khan, who was born on the 21st November 1983 and is a national of Pakistan. He was granted leave to enter the UK under Tier 4 of the points-based system as a student on the 23rd September 2008. He arrived in the UK on the 4th October 2008 and at the time the intention was that he would study at the University of Northampton. The finding made by the First-tier Tribunal in this case is that he studied there for a year before transferring to a college in Holborn to achieve a degree from the University of Wales. In due course the

Appellant applied for further leave under Tier 4 but the application was refused by the Secretary of State in a refusal letter of the 24th March 2014, the reason being given as follows.

“You have previously been granted leave to study courses at degree level or above for four years and six months. Your current application is to study Pearson BTEC level 7 extended diploma in strategic management and leadership, an NQF level 7 course, until the 30th October 2014. A grant of leave to study this course would result in you having spent more than five years in the UK as a Tier 4 (General) Student studying courses that consist of degree level study or above, therefore you fail to meet the requirements of paragraph 245ZX(ha) of the Immigration Rules.”

2. That short paragraph states precisely that, that if the course is at degree level or above the grant of leave to remain the applicant is seeking does not lead to the applicant having spent more than five years in the UK as a Tier 4 (General) Migrant or as a student studying courses at degree level or above. There then follow a succession of exceptions none of which apply in this case.
3. The Appellant appealed that decision. That was heard by First-tier Tribunal Judge Afako at Taylor House on the 23rd December 2014 and his appeal was dismissed for reasons given in a decision promulgated on the 15th January this year. At that appeal the Appellant did not attend. The Judge, having considered the evidence and having heard submissions from the Secretary of State’s representative, concluded that the Appellant had entered the UK as a student, he took the date as the 23rd September, which is a slight error but nothing really turned on that, that he had changed after a year to study at Holborn College, there had been no breaks in his leave to remain and he was at all times issued with further leave to study at degree level.
4. On that basis, having amassed more than five years, the appeal was dismissed. The Appellant in lengthy grounds sought to challenge that decision although his complaint carries less weight given that he chose not to attend and indeed has not attended before the Upper Tribunal today.
5. The position is not correctly stated in his skeleton argument. The skeleton argument that he provided, which largely deals with matters which are not relevant, at page 11 gives a table for his study dates. The dates are incorrect and mention studying at level 6 between January 2011 and September 2012, level 7 between the 7th January 2013 and the 11th December 2013 and again at level 7 from the 17th February 2014 to the 30th October 2014. The table is inaccurate for two reasons. The first is that it omits any reference to his period of study at Northampton, a period we know to have been found to be a year by the Judge, and he misstates his time at Holborn College, which we know began in fact in May 2009 because that is the date given in the transcript which appears at page 25 in that bundle. If you add up those periods of time they come to well over five years, even allowing for an overlap of a few months in 2009, and the Appellant, on whom the burden would rest to show that he has not spent

that period of studying, has manifestly failed to show that the Judge was wrong in that regard.

6. There is a complaint also that the Judge did not have regard to appropriate Immigration Directorate Instructions. It is correct that the determination of Judge Afako makes no reference to those. That, however, is not an error because a correct and fuller analysis of the dates involved clearly shows that the Appellant cannot meet the provisions of 245ZX(ha). Accordingly there is no material error or no error in the decision of Judge Afako and that decision shall stand.
7. Perhaps we ought to add by way of clarification that the Northampton date must have started sometime after his arrival in October 2008, that is more or less consistent with the start of the academic year, and his change date and the start date on the transcript at Holborn is May 2009. The clear implication and indeed the finding made by the Judge was that he was studying during that time. We also give the Appellant the benefit of the doubt because if he was not studying he would have been in breach of his visa conditions at that stage.

NOTICE OF DECISION

The decision of the First-tier Tribunal contained no error of law, the Appellant's appeal against the decision of the First-tier Tribunal is dismissed and the decision of the First-tier Tribunal stands.

No anonymity direction is made.

Signed

Date 27th May 2015

Deputy Upper Tribunal Judge Parkes

In dismissing the appeal we make no fee award.