



IAC-TH-LW-V1

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

Appeal Number: IA/28354/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 17 September 2015**

**Decision & Reasons Promulgated
On 23 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE APLEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR Md NAZMUL HAQUE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms. A. Holmes, Home Office Presenting Officer.

For the Respondent: Mr. Md. Islam, Solicitor.

DECISION AND REASONS

1. This is a respondent appeal but I shall henceforth refer to the parties in the original terms detailed in the decision of Judge of the First-tier Tribunal C. Greasley following a hearing on 5 March 2015.
2. The appellant is a citizen of Bangladesh who applied for further leave to remain in the United Kingdom as a Tier 4 (General) Student, pursuant to paragraph 245ZX(A) and paragraph 322(3) of the Immigration Rules HC 395 (as amended). His application was refused and he appealed. In a

decision promulgated on 11 March 2015 Judge of the First-tier Tribunal C. Greasley allowed that appeal under the Immigration Rules.

3. The respondent sought permission to appeal which was granted by Judge Grimmett on 5 May 2015. The reasons for that decision are:-

- “1. The Respondent seeks permission to appeal, in time, against the Decision of First-tier Tribunal Judge Greasley promulgated on 11th March 2015 to allow the Appellant’s appeal against the decision of the Respondent on 25th June 2014 to refuse him leave to remain as a Tier 4 student.
2. The grounds assert that the Judge was wrong to find that the Appellant met the requirements of the rules as he was undertaking a supplementary course while awaiting the outcome of his application for leave the (sic) remain.
3. It is arguable that the Judge erred in concluding that the Appellant was undertaking a supplementary course as that course took place after the Appellant’s leave to remain as a student had expired.”

4. Thus the appeal came before me today.

5. At the hearing Ms. Holmes handed up the authority of **Bhimani (Student: Switching Institution: Requirements) [2014] UKUT 00516 (IAC)**. Mr. Islam handed up Tier 4 points-based system policy guidance of the respondent in relation to extra studies whilst in the United Kingdom and supplementary courses.

6. Both representatives acknowledged that there was a typing error within the judge’s decision at paragraph 6 where there is reference to “Nottingham Trent University”. However both were accepting it had no material impact on either the appeal or the proceedings before me.

7. Ms. Holmes also acknowledged that for the first time she had this morning been able to give consideration to the policy guidance issued by the Home Office and argued that the issue before me was whether or not the appellant’s attendance on an extra course was supplemental to the one for which he had been issued with a CAS. She quite properly referred me to the authority of **Bhimani** and in particular paragraphs 23 and 24 which state:-

“23. It is important also to bear in mind the terms of s.3(2) which, as set out above, establishes that the Secretary of State shall from time to time lay before Parliament statements of the rules or changes in the rules laid down by her as to the practice to be followed in the administration of the Act for, inter alia, regulating the entry into and stay in the United Kingdom of persons required by the Act to have leave to enter, including any rules as to the period for which leave is to be given and the conditions to be attached in different circumstances.

24. It is in this light that paragraph 245ZW(c)(iv)(1) has to be seen. The effect of this provision is that entry clearance in the case of a Tier 4 (General) Student will be granted subject to conditions including the requirement that the student is not allowed to study except at the

institution which the Confirmation of Acceptance for Studies Checking Service records as their sponsor. That is a clear example of a provision made in accordance with s.3(2) of the 1971 Act.”

She submitted that the judge may have erred by not taking into account this authority but also acknowledged that it may well have not been put before him. She also, in my view quite properly, recognised that at paragraph 16 of the judge’s decision there appears to be a concession by the Presenting Officer at the First-tier Tribunal hearing and an acknowledgement that the appeal should be allowed. However, again in my view quite properly, she acknowledged that if the judge had indeed erred it could not be said that he had done so on a material basis which would have in any way caused the outcome of the appeal to be anything different to it being allowed under the Immigration Rules.

8. In those circumstances there was no need for me to hear from Mr. Islam.
9. I accept the submissions made by Ms. Holmes and on my own analysis of this appeal I am satisfied that the judge did not materially err.

Decision

10. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
11. No anonymity direction is made.

Signed

Date 22 September 2015.

Deputy Upper Tribunal Judge Appleyard