



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

Appeal Number: IA/22418/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 24 September 2018**

**Decision & Reasons
Promulgated
On 23 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MR SYED SERAJUL AKMAL AL-MAHMOOD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Appellant in person

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Bangladesh, date of birth 5 May 1982, appealed against the Respondent's decision, dated 1 June 2015, to refuse further leave to remain in the UK as a Tier 2 (General) Migrant under the Immigration Rules.

IMMIGRATION HISTORY

2. The Appellant entered the UK as a Tier 4 (General) Student being granted leave to enter on 30 December 2009. Such leave was variously extended. On 23 July 2013 he was granted leave to remain until 21 May 2014 as a Tier 4 (General) Student. The grant of leave was subject to a condition restricting study to/at Access College London.
3. He applied on 21 May 2014 to vary this leave with a CAS to study CIMA level 7 at the London College of Advanced Management (LCAM). Whilst waiting for a decision on his application he undertook a part-time course at the London School of Marketing (LSM) for which there was no CAS letter. He did not apply to vary from LCAM to LSM. At LSM (between 26 May 2014 and 5 December 2014) he obtained a degree of Master of Arts in marketing and innovation issued by Anglia Ruskin University on 5 December 2014.
4. He applied to vary (“switch”) the Tier 4 application (of 21 May 2014) to Tier 2 (General) Migrant on 4 March 2015. The 21 May 2014 (13 June 2014 submission of documents) application was refused on 1 June 2015.

THE APPEAL STAGES

5. The appeal before First-tier Tribunal Judge Shepherd was dismissed on 17 January 2017. Permission to appeal was refused by First-tier Tribunal Judge Pickup on 27 June 2017 and Upper Tribunal Judge Gill on 13 September 2017 but granted by the Vice President of the Upper Tribunal C M G Ockelton on 19 December 2017. On 16 February 2018 Mr Melvin, Senior Presenting Officer for the Secretary of State, the Appellant in person, sought to raise new grounds relating to “switching” from the Tier 4 to Tier 2.

6. My adjournment gave the parties time to make written representations. Mr Melvin's were dated 2 March 2018 and the Appellant's 22 March 2018 and 30 July 2018.
7. Mr Melvin relied on paragraphs 245HD and 245ZY of the Immigration Rules (the Rules) Period and conditions of grant.
8. The Appellant relied on paragraph 245ZY(c)(iv)(3) of the Rules to support his contention that his studies at LSM were supplementary study which was permissible.
9. The "switching" issue was relied upon by the Respondent with reference to the Immigration Act 1971 Section 3(1)(c)(ia) and the condition on the grant of leave restricting his studies in the UK to Access College.

THE JUDGE'S DECISION

10. The Respondent accepted the Judge erred in law because she had placed reliance on paragraph 245HD(d)(v) of the rules which did not come into being until 24 November 2016. However, it was said the error of law was not material. The Judge found [D35] the application of 21 May 2014 was made in time.
11. The Judge accepted the Appellant had undertaken study between May and December 2014 whilst on 3C leave under the Immigration Act 1971. The Judge found that the original CAS (2013) was only for Access College. Accordingly, the institution (LSM/Anglia Ruskin University) was not the one for which Tier 4 leave was last granted. Paragraph 245HD(d)(iv) of the Rules applied and the Appellant was subject to a condition preventing the May to December 2014 course of study at LSM.
12. The March 2016 policy guidance on "switching" did not assist the Appellant.

13. I find that the “supplementary studies”, as the Appellant claims them to be, were not permitted but rather a breach of the restriction of the 23 July 2013 grant of Tier 4 leave. Thus, even though the Judge erred over the application of later Rules, the error makes no difference to the outcome because the appeal could not have succeeded.
14. For the avoidance of doubt in Immigration Rules, valid from 2 March 2015–16 March 2015, paragraph 245ZY applied to an application made at or after 4 March 2015 and set out the conditions on which leave to remain will be granted. In this appeal the relevant condition (restriction) was that of 23 July 2015 grant. Thus, even if the LSM/Anglia Ruskin University degree was “supplementary”, as subjectively defined by the Appellant’s, it was not with Access College and not otherwise permitted.
15. The “switching” point was not the basis for the Respondent’s decision of 1 June 2015 nor raised before the First-tier Tribunal Judge and therefore no error of law. However, were it necessary to do I would have upheld the “switching” objection to the application to vary the Tier 4 application.
16. There was no unfairness or unlawfulness in the Respondent’s decision to impose the condition on the 23 July 2013 grant of leave. In reaching that conclusion I have fully considered Naveed (Student: Switching Institution: Requirements) [2014] UKUT 00516, and EK (Ivory Coast) [2014] EWCA Civ 1517. There was no administrative error by the college, nor did the Respondent have any responsibility for the Appellant’s problem, nor did the Respondent’s conduct create the Appellant’s problem. At its heart the Appellant has misunderstood the effect of the 23 July 2013 condition (restriction).
17. The real effect of delay in determining the 21 May 2014 application has been to enable the Appellant to gain the material qualification of his masters degree and the Appellant has remained lawfully in the UK to date.

NOTICE OF DECISION

18. The Original Tribunal's decision stands. The appeal is dismissed
19. No anonymity order made.
20. The appeal has failed, therefore no fee award is appropriate.

Signed

Date 10 October 2018

Deputy Upper Tribunal Judge Davey