



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

Appeal Number: IA/02539/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 September 2014**

**Determination  
Promulgated  
On 16 September 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE APLEYARD**

**Between**

**MR MOHAMMAD HOSSAIN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr. Z. Khan, Legal Representative.

For the Respondent: Ms. A. Everett, Home Office Presenting Officer.

**DETERMINATION AND REASONS**

1. No application has been made for anonymity in these proceedings and there is no reason why such an order should be made.
2. The appellant, born 13 August 1988, is a citizen of Bangladesh.

3. He made application for leave to remain in the United Kingdom as a Tier 4 (General) Student and for a biometric residence permit.
4. The respondent refused that application and the appellant duly appealed. An appeal was heard by Judge of the First-tier Tribunal N M K Lawrence who, following a hearing at Hatton Cross, in a determination promulgated on 30 June 2014, dismissed the appellant's appeal.
5. On 23 July 2014 Judge of the First-tier Tribunal Kelly granted permission to appeal. His reasons for so doing were:-

“1. The appellant seeks permission to appeal, in time, against a decision of the First-tier Tribunal (Judge Lawrence) who, in a determination promulgated on 30<sup>th</sup> June 2014, dismissed his appeal against the respondent's decision to refuse his application for leave to remain as a Tier 4 (General) Student Migrant and to remove him from the United Kingdom.

2. The application contends that the Tribunal misinterpreted and misapplied the requirements of paragraph 245ZX(ha) of the Immigration Rules [paragraph 9 of the determination] and failed to give any reasons for finding that the appellant's IELTS scores did not meet the requirements of the Rules when in fact they plainly did so [paragraph 10 of the determination]. The grounds are arguable.”

6. Before me today both representatives sought time to consider the position between themselves.
7. In particular they considered two documents. The first being the Home Office Tier 4 Guidance based on the Immigration Rules valid from 17 January 2014. In particular my attention was drawn to the following:-

**“Applications made on or after 6 April 2012**

For applications made on or after 6 April 2012, paragraph 245ZX(ha) of the Immigration Rules restricts Tier 4 (General) Students to a maximum of five years' study at degree level or above. Any period studying at degree level or above in the student route in place before 31 March 2009 also counts toward the maximum five years permitted at this level. Degree level courses are defined as those at:

- National Qualification Framework (NQF) level 6
- Qualifications and Credit Framework (QCF) level 6
- Scottish Credit and Qualification Framework level 9.”

8. My attention was also drawn to page 8 of the appellant's original bundle placed before the First-tier Tribunal where it is shown that a band score

under the IELTS scheme of 5.0/5.5/6.0 is equivalent to B2 under the Common European Framework of Reference levels.

9. The grounds effectively assert that the judge erred in not recognising that the appellant was able to meet the requirements of the Immigration Rules.
10. Ms Everett conceded that the respondent's own guidance concluded that scores between 5.0' 5.5 and 6.00 on a relevant module were equivalent to B2 as per the documentation within the appellant's original bundle. Also that the judge materially erred in concluding that the appellant could not meet the requirements of the Immigration Rules by reason of miscalculating that the pre-sessional English course that the appellant undertook did not count toward the five year maximum period.
11. In all the circumstances therefore it was conceded that the judge had materially erred as detailed within the grounds seeking permission to appeal.
12. That concession, I find to be correctly made, as my own analysis of the materials put forward in this appeal suggest that the judge has materially erred for all the reasons put forward within the grounds seeking permission to appeal.

### **Conclusions**

13. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
14. I set aside the decision.
15. I remake the decision in the appeal by allowing it.
16. Anonymity direction not made.

Signed

Date 16 September 2014.

Deputy Upper Tribunal Judge Appleyard

**TO THE RESPONDENT**  
**FEE AWARD**

In light of my decision to remake the decision in the appeal by allowing it, I have considered whether to make a fee award (Rule 23A (Costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and Section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011). I make a whole fee award. This is an appeal that has succeeded and on the Home Office Presenting Officer's position and concession today the evidence should have resulted in the original application being granted by the respondent.

Signed

Date 16 September 2014.

Deputy Upper Tribunal Judge Appleyard