



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

Appeal Numbers: IA/29804/2013  
IA/29805/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 29 May 2014**

**Determination**

**Promulgated**

**On 25 June 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GIBB**

**Between**

**JYOTI PARESH BORKHATARIA - FIRST APPELLANT  
PARESH PRABHUDAS BORKHATARIA - SECOND APPELLANT  
(NO ANONYMITY ORDER MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr O Richards, of the Law Clinic

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellants, who are citizens of India, are a married couple. The first appellant (hereinafter referred to as the appellant) was refused further leave to remain as a Tier 4 (General) Student Migrant, with her husband, the second appellant, as her dependant. The applications were refused on

27 June 2013, and the appeals were dismissed by Judge of the First-tier Tribunal Britton, in a determination promulgated on 13 March 2014.

2. The appellant had initially come to the UK in 2008 as a student, and had been granted further leave on the same basis in 2009, 2010, and 2012. Her final period of leave was until 31 May 2013. The application that was refused on 27 June 2013 was made before her leave expired.
3. The refusal was on the basis that the appellant would, if granted further leave, exceed the maximum period of five years allowed for studies at degree level or above. None of the exceptions to this limit, including study for a PhD, applied.
4. The appeals were dismissed on the basis that the decision was in accordance with the Immigration Rules.
5. Permission to appeal was granted on the basis that it was arguable that the appellant's ACCA studies from September 2010 to December 2011 should have been disregarded, in calculating the five year period, because they were not at degree level. Reference was made to **Mirza (ACCA Fundamental level qualification - not a recognised degree) [2013] UKUT 00041 (IAC)**.

### **The Hearing**

6. At the hearing before me it was agreed that the key point was whether the ACCA course was of degree level. The relevant Immigration Rule, that was the basis of the refusal, was paragraph 245ZX(ha), which set the five year maximum period allowed for degree level courses.
7. Mr Richards, for the appellants, submitted that the appellant had only spent a total of three years and seven months studying courses at degree level when she made the application. This was the period that remained when the ACCA studies were disregarded.

### **Decision and Reasons**

8. I have decided that no material error of law has been shown, and the judge's decision therefore remains undisturbed.
9. The challenge to the judge's determination appears to me, on examination, to rest on a failure to appreciate the difference between "degree level study" on the one hand, and a "recognised degree" on the other. The case of **Mirza** was concerned with the question of whether the ACCA Fundamental Level qualification was a recognised degree. It was decided, in that case, that the ACCA did not have degree awarding powers, and that the qualifications which it awards are not UK recognised degrees.
10. This is not the same issue as whether such studies may amount to "degree level study". The words "degree level study" are defined in

paragraph 6 of the Immigration Rules. The definition includes a course which leads to a recognised UK degree, but it also includes an equivalent qualification at Level 6 or above of the revised National Qualifications Framework.

11. The CAS for the ACCA course in question, at page 22 of the appellants' bundle, includes the following observation on the academic level of the course: "Equivalent to NQF Level 6".
12. When this point was discussed at the hearing Mr Richards, for the appellants, was unable to argue that the relevant ACCA course was not degree level study as defined in the Immigration Rules. He did return to the point that the judge had not considered the case of **Mirza**, and argued that this in itself amounted to an error of law.
13. Although it was on a closely related point it appears to me that the decision in **Mirza** is not, in fact, relevant to the point at issue in this case. It was therefore not an error of law for the judge not to consider the case, quite apart from the fact that it appears not to have been put before him.
14. There was no suggestion of any need for anonymity, and an anonymity direction is not made. The appeals were dismissed at the First-tier, and those decisions stand. There can therefore be no question of any fee awards.

### **Decision**

15. The appeal to the Upper Tribunal is dismissed. The judge did not err in law in his determination. His decision dismissing the appellants' appeals stands.

Signed

Date 24.06.2014

Deputy Upper Tribunal Judge Gibb