Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/37804/2013
IA/37807/2013
IA/37808/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 6 June 2014	**On 24 June 2014**

.....

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

QASIM MEHMOOD
FARZANA QASIM
UMME ROMAN

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr S A Saeed, solicitors, Legal Solutions Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. These are appeals by a man and his dependent wife and child against the decision of the First-tier Tribunal dismissing their appeals against the decision of the respondent to refuse them leave to remain in the United Kingdom as a Tier 4 (General) Student or dependant of a student as the case may be.

2. There were two points taken against the first appellant. It was said that he did not produce the documents necessary to show that he had the required funds at the required time and it was said that he did not show progress in his studies. The First-tier Tribunal found against him on both points.

3. I am satisfied that the First-tier Tribunal was wrong to say that the first appellant had not produced the right documents to show the right funds at the right time. It was his case that he had actually produced all the appropriate documents and they had been lost by the Secretary of State. Copy documents were presented which clearly show that the appellant had sufficient money to satisfy the requirements of the Rules by a very substantial margin. The First Appellant had no reason not to disclose the documents.

4. It has always been the First Appellant's case that the Secretary of State had lost the document or documents that were sent and the Secretary of State did not respond under the flexible evidence Rule or do anything to try and rectify the error but complained that the documents had not been served.

5. Ms Isherwood found herself in delicious difficulty because her enquiries to investigate the case in an effort to prepare it were frustrated by her not being given any copies of the necessary documents, and she told me in her characteristically straightforward way that her own enquiries on the internal blogging system of the Home Office were at least equivocal about what was actually served. She had to agree with me that this was an exceedingly poor platform on which to mount a defence to the suggestion that the documents had been lost.

6. The First-tier Tribunal Judge did not really engaged with this point and had no proper basis for concluding that the documents never were produced. To that extent he was wrong.

7. However, the real point of contention was the extent of progress in the first appellant's studies. It is quite plain that he had produced a form CAS indicating that he was seeking to progress in his studies in the sense that he last studied something at NVQ level 4 and now wanted to move to NVQ level 5. This is a kind of progress. The problem is that it is not progress within the meaning of paragraph 120A of HC 395. As was set out by the First-tier Tribunal in its determination, this requires that:

> "… the sponsor has confirmed that the course for which the Confirmation of Acceptance for Studies has been assigned represents academic progress from previous study as defined in (b) below undertaken during the last period of leave as a Tier 4 (General) Student or as a Student where the applicant has had such leave."

8. It goes on:

> "(b) For a course to represent academic progress from previous study, the course must:
> (i) be above the level of the previous course for which the applicant was granted leave as a Tier 4 (General) Student or as a Student, or
> (ii) [not applicable here]."

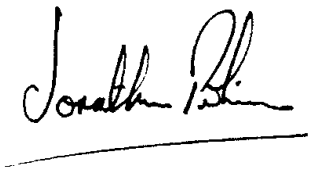
9. The relevant point is that the applicant had to show it was progress from the course for which he was previously granted leave as a Tier 4 (General) Student. The first appellant was previously granted leave to study an ACCA course at NVQ level 7, and the intention to study at level 5 does not represent progress from the course for which he was granted leave.

10. This is precisely the point that was considered by the Tribunal in **Naeem (Para 120A of Appendix A) [2013] UKUT 465 (IAC)** where the Tribunal (Mr C M G Ockelton, Vice President and Upper Tribunal Judge Martin) made clear at paragraph 10 that the Rules allow no flexibility and the relevant test was the level of the course for which the applicant had leave.

11. This applicant had changed his course of studies. He may not have been entirely at liberty to do that but he did it for the apparently sensible reason that his college had closed or was closing his course of studies and, in his mind, he was making the best of a change of circumstances. This is not a case of his being criticised for behaving cynically or irresponsibly but of his attempting unsuccessfully to meet the requirements of the Rules.

12. It follows therefore that the First-tier Tribunal Judge did not err in law materially, and I uphold his decision. For this reason I dismiss the appellants' appeals.

13. I am very grateful to Mr Saeed and Ms Isherwood for their measured and careful presentation of this case but Mr Saeed's charm and care cannot alter the fact that the Rules are against his client.

Signed
Jonathan Perkins
Judge of the Upper Tribunal  Dated 24 June 2014