Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/53231/2013**

THE IMMIGRATION ACTS

Heard in Manchester	**Determination Promulgated**
On 25th July, 2014	**On 06th August 2014**
Given extempore	

Before

Upper Tribunal Judge Chalkley

Between

TAHIR GHAFOOR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None
For the Respondent: Mr G Harrison, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan. He was born on 28th January, 1983 and first landed in the United Kingdom on 15th February, 2009, in possession of a visa that conferred leave to enter until 30th September, 2010. The appellant was subsequently granted further leave to remain

from 25th October, 2010 to 21st October, 2013. Both periods of leave contained conditions restricting employment and recourse to public funds.

2. On 19th October, 2013 the appellant made a combined application for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant under the points-based system and for a biometric residence permit. That application was refused by the respondent on 28th November, 2013.

3. In refusing the application the respondent said this:

> "Grants of entry clearance or leave to remain for Tier 4 applicants to undertake studies at degree level or above are limited to a maximum of five years unless
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> (i) the applicant has successfully completed a course at degree level in the UK of a minimum duration of 4 academic years, and will follow a course of study at Master's degree level sponsored by a sponsor that is a Recognised Body or a body in receipt of public funding as a higher educational establishment (HEI) from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding for Wales or the Scottish Funding Council, and the grant of leave must not lead to the applicant having spent more than 6 years in the UK as a Tier 4 (General) Student or as a student studying courses at a degree level or above.
>
> (ii) the grant of leave to remain is to follow a course leading to the award of a PhD and the applicant is sponsored by a sponsor that is a Recognised Body or a body in receipt of public funding as a higher educational establishment (HEI) from the Department of Employment and Learning in Northern Ireland the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Scottish Funding Council; or
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> (iii) the applicant is finding a course of study in:
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> (1) Architecture;
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> (2) Medicine;
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> (3) Dentistry;
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> (4) Law, where the applicant has completed a course at degree level in the United Kingdom and is progressing to:
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> a. the Common Professional Examination;
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> b. the Graduate Diploma in Law and Legal Practice Course, or
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> c. the Bar Professional Training Course.
>
> (5) Veterinary Medicine & Science or
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> (6) Music at a music college that is a member of Conservatoires UK (CUK).
>
> You have previously been granted leave to enter/remain in order to study:
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> 1. MA in International Human Resource Management at London Metropolitan University for 18 months.
>
> 2. ACCA & MBA at Finance & Business Training from 28 February 2010 to 21 June 2013.

> Your current application is to study a Diploma in Business Management at Taitec College, Manchester from 22 October 2013 until 27 April 2014.
>
> Your course is not one of the courses listed in (iii) above. Therefore you do not satisfy the requirements of the Immigration Rules for this category and it has been decided to refuse your application for leave to remain as a Tier 4 (General) Student Migrant under paragraph 245ZX(ha) of the Immigration Rules."

4. The appellant appealed and his appeal came before First-tier Tribunal Judge Pacey, who heard the appeal without an oral hearing at the request of the appellant on 11th March, 2014.

5. She correctly directed herself on the law and noted that the appellant had first been granted leave to enter as a student in February 2009. As at the date of the Secretary of State's decision, this was just under five years, the five year period expiring on 15th February 2014. The course for which the appellant applied did not end until 27th April, 2015, a further period of more than a year. In paragraph 9 of the determination the judge said this:

> "I have taken into account the Appellant's argument relating to the ACCA. However, he has not given a clear timeline as to his studies in the UK. He has not disputed the Respondent's statements as to his history of study but has not set out the dates of his studies for the MA at London Metropolitan University or for the ACCA and MBA. His grounds of appeal imply that he has not completed the latter course, but his application is to study for a different, and on the face of it lower level course."

6. The judge dismissed his appeal under the Immigration Rules. First-tier Tribunal Judge Saffer granted permission, but failed to identify the arguable errors of law in his grant.

7. The matter was listed for hearing before me at 10am on 25th July, 2014. The respondent was represented by Mr Harrison. There was no appearance by or on behalf of the appellant.

8. Sky Solicitors had written indicating that they were not instructed to attend the hearing and enclosed what they referred to as being a "skeleton argument". It is not a skeleton argument at all but written submissions, a copy of them is attached to this determination as an appendix.

9. Mr Harrison told me that he relied on the Secretary of State's Rule 24 response.

10. It is suggested on behalf of the appellant that the respondent has misunderstood what is meant by "*studying*". There is no merit at all in the argument that the appellant was granted eighteen months' leave in order to study a master of arts degree between 15th February, 2009 and 30th September, 2009, but because he did not use all the time studying, only the period of time during which he was studying counts.

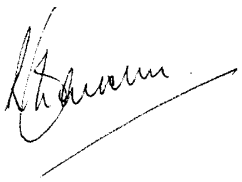
11. The grant of leave followed his application: he applied for a period of eighteen months' leave and that is why he was granted a period of

eighteen months' leave. If he had only wanted a shorter period of leave he should have said so.

12. The second period of leave was for forty months. This was for the period between 25th October, 2010 and 21st October, 2013. In the skeleton argument the course is referred to as being "ACCA", but of course the appellant actually applied not only to undertake an ACCA, but also to undertake an MBA. An MBA is a degree, so that having already been granted eighteen months' leave to study his MA, he was then granted forty months so that he could study his MBA as well as his ACCA. The fact that his course only lasted 36 months is, with respect, irrelevant. He applied for leave for forty months to complete the course and that was the period of leave granted to him. If he had not wanted forty months' leave then he should have applied for a shorter period.

13. The second challenge is without merit also. It suggests that the ACCA qualification is not a course at degree level. I accept that, as I believe did the Immigration Judge. However the appellant was not simply studying for an ACCA professional qualification, but he was **also** studying for a degree, namely a Masters in Business Administration, so that the total period of leave, as the judge pointed out, would have been for more than five years, had the appellant's application been granted.

14. It is also suggested that in some way the decision defies basic standards of fairness. I am afraid I have had some difficulty in understanding the rather confused argument, but there is no merit in the suggestion that in some way the Secretary of State, or the judge have erred in interpreting the Immigration Rules. They did not. So far as human rights are concerned I accept that the judge did err in failing to consider whether or not the appellant met the requirements of paragraph 276ADE of the Immigration Rules, but on the evidence before her and properly applying *MF (Nigeria) v SSHD [2013]* EWCA Civ 1192, *Gulshan (Article 8 – new Rules – correct approach)* [2013] UKUT 00640 (IAC) and *Nagre, R (on the application of) v Secretary of State for the Home Department* [2013] EWHC 720 (Admin), she could not have done anything other than to dismiss the appellant's Article 8 appeal. Her failure to consider it was therefore immaterial, because it has no bearing on the outcome of the appeal. I uphold her decision. The appellant's appeal is dismissed.



Upper Tribunal Judge Chalkley