



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

**Appeal number: IA/01134/2014  
IA/01154/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On January 30, 2015**

**Decision Promulgated  
On February 2, 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

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

Appellant

**and**

**MRS MST LUCKY AKHTER  
MR AHAMDUL HASAN  
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Duffy (Home Office Presenting Officer)

For the Respondent: Ms Kabir (Legal Representative)

**DETERMINATION AND REASONS**

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.

2. The appellants are citizens of Bangladesh. On October 28, 2013 the first-named applied to remain as a Tier 4 (General) student. Her husband applied in tandem as her dependant. The respondent refused both applications on December 13, 2013 because the first-named appellant had already been granted leave to study a course at degree level or above for 4 years and 1 month and as this proposed course would take her over the five year maximum period allowed as a Tier 4 (General) student studying a course that consists of degree level study or above she failed to meet the requirements of paragraph 245ZX(ha) HC 395.
3. The appellants appealed on December 23, 2013 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
4. The matter came before Judge of the First-tier Tribunal Sweet (hereinafter referred to as the "FtTJ") on October 16, 2014 and in a decision promulgated on October 27, 2014 he allowed the appeal under both the Immigration Rules and article 8 ECHR.
5. The respondent lodged grounds of appeal on October 30, 2014. She submitted the FtTJ erred by allowing the appeals by misdirecting himself in law and by failing to apply the approach in R (Nagre) v SSHD [2013] EWHC 720 (Admin).
6. Judge of the First-tier Tribunal Lever granted permission to appeal on December 17, 2014 stating there was an arguable errors in law based on the grounds.
7. The appellants were in attendance in court and were represented as set out above.

### **PRELIMINARY ISSUE**

8. Mr Duffy agreed that Paragraph 245ZY HC 395 Note (iii) made clear that the guidance had been incorporated into the Rules and this stated that additional periods leave to remain granted further to the table above will be disregarded for the purposes of calculating whether a migrant has exceeded the limits specified at 245ZX(h) to 245ZX(hb).
9. Mr Duffy indicated his substantive ground of appeal had no merit and as the appellants satisfied the Rules it would also be disproportionate to remove them under article 8 ECHR.
10. Ms Kabir agreed with his observations and in the circumstances I find there was no error in law and I dismiss the respondent's appeals.

### **DECISION**

11. The decision of the First-tier Tribunal did not disclose an error in law. The original decision shall stand in its entirety.

12. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) an appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. An order was not made in the First-tier and I see no reason to amend that order.

Signed:

Dated: **February 2, 2015**

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I uphold the original decision on fees.

Signed:

Dated: **February 2, 2015**

Deputy Upper Tribunal Judge Alis