



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
IA/04106/2014**

APPEAL NUMBER:

THE IMMIGRATION ACTS

**Heard at: Field House
On 29 January 2015**

**Decision and Reasons
Promulgated
On 4 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR ARINZE ZAKARI ENEMUO
NO ANONYMITY DIRECTION MADE**

Respondent

Representation

For the Appellant: No representative

**For the Respondent: Mr T Melvin, Senior Home Office Presenting
Officer**

DETERMINATION AND REASONS

1. For the sake of convenience I shall refer to the appellant as the secretary of state and the respondent as "the claimant."

2. The secretary of state appealed with permission against the determination of the First-tier Tribunal Judge, promulgated on 25 June 2014, allowing the claimant's appeal against the secretary of state's decision to refuse his application for leave to remain as a Tier 4 (General) Student.
3. On 5 December 2014, Upper Tribunal Judge Pitt granted the secretary of state permission to appeal on the basis that the First-tier Tribunal "was incorrect" in his approach to the claimant's history and the weight given to the withdrawal of licences at two of the colleges from whom the claimant obtained a CAS.
4. The claimant's refusal letter was produced, which established that were his current application to be granted, he would have obtained leave for three years, 11 months and 13 days for study at below degree level.
5. The grounds submitted that the Judge had not adequately addressed the refusal letter itself. It was evident that the claimant's first college withdrew sponsorship due to the claimant's lack of attendance and lateness. The refusal acknowledged that the claimant had in fact submitted a new application four months after the UKBA was notified of the withdrawal of sponsorship and the licence was revoked for the new college, but nevertheless, taking into account the period in which the claimant was supposed to be studying, and "due to his own actions" was not, and the period of the proposed study still exceeded the maximum three years permitted in his case.
6. The Judge did not address the fact that the sponsorship was withdrawn as a result of the claimant's actions and not that of the secretary of state. The period after 11 November 2011 could be counted and taken into account because the claimant did not explain why he failed to study at the institute where he was granted leave to enter.
7. Immigration Rule 245ZX(h) provides that if the course is below degree level, the grant of leave to remain the appellant is seeking must not lead to the applicant's having spent more than three years in the UK as a Tier 4 Migrant since the age of 18, studying courses that did not consist of degree level study.
8. The claimant has never explained why he failed to study at the institute where he was granted leave to enter. Accordingly, the period after 11 November 2011 should be counted for the purpose of the immigration rules.
9. The decision of the First-tier Tribunal accordingly involved the making of an error on a point of law. I accordingly set it aside and remake it.
10. I am satisfied that the claimant had been properly notified as to the date and time of hearing of the secretary of state's appeal. There has been no attendance by the claimant or any representative.

11. Mr Melvin informed me during the course of the hearing that the claimant was no longer in the UK, having departed for Nigeria on 13 January 2015.
12. He produced a disclaimer from the claimant relating to the case of voluntary departure. In the written notice, signed and dated by the claimant, he stated that he wished to voluntarily depart the UK for Nigeria. He had been notified that he was liable to be removed under immigration powers.
13. He was given the opportunity to access legal advice. He confirmed that he was aware that his case is still under consideration but nevertheless wished to leave the UK without waiting for the outcome of this consideration.
14. He stated in the signed notice that he wished to formally withdraw his appeal against: "refusal of T4-General Student - LTR Lodged on 20/03/2013 and authorise you to inform the appropriate authorities as necessary." He also wishes to withdraw any and all outstanding claims or applications he has made to stay in the UK.
15. I have had regard to s.104(4) of the Nationality, Immigration and Asylum Act 2002 which provides that an appeal under s.82(1) brought by a person while he was in the UK shall be treated as abandoned if the appellant leaves the UK.
16. The claimant's appeal is accordingly still pending. However, he has voluntarily left the UK and his current appeal is treated as abandoned.
17. Pursuant to Rule 17A(2), it is provided that where an appeal is treated as abandoned pursuant to s.104(4) of the 2002 Act, the Upper Tribunal must send the parties a notice informing them that the appeal is being treated as abandoned.
18. I accordingly direct that the Tribunal send the parties a notice informing them that the appeal is treated as abandoned.

No anonymity direction is made.

Signed

Date 3/2/2015

Deputy Upper Tribunal Judge Mailer