



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

Appeal Numbers: IA/06174/2014
IA/02005/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 16 December 2014**

**Decision & Reasons
Promulgated
On 6 January 2015**

Before

**THE HONOURABLE MRS JUSTICE CARR DBE
UPPER TRIBUNAL JUDGE GOLDSTEIN**

Between

**MRS JENISHA BHAU
MR SANTOSH SHRESTHA
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms S Jaisri, Counsel instructed by Sam Solicitors
For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. This is an adjourned hearing of an appeal against a decision dated 28 March 2014 of the First-tier Tribunal Judge whereby he refused to allow the appeals of both applicants against the refusal of the Secretary of State for the Home Department ("the SoS") to grant the first applicant Tier 4 student leave and the second applicant leave as a Tier 4 dependent. Permission to appeal has been granted.
2. At the outset of the hearing we drew to the attention of the parties our concern that the original decision taken by the SoS under Immigration Rule 245ZX(ha) was in fact a decision taken by reference to the wrong Immigration Rule.

3. In our judgment Immigration Rules 245ZX (ha) was not the appropriate Rule for the First-tier Tribunal Judge to consider any more than it was the correct Rule for the SoS to consider, for the simple reason that the appellants' application for leave to study was made by reference to an application to study here for an ACCA course. Following the authority of **Adeem Rasool Mirza v Secretary of State for the Home Department [2013] UKUT 0041 (IAC)** (approved subsequently by the Court of Appeal in **R (on the application of Syed and another) v Secretary of State for the Home Department [2014] EWCA Civ 196**), it is clear that the ACCA does not have degree-awarding powers and the qualifications which it awards are not UK-recognised degrees.
4. Having raised the matter with the parties, there seems to be a general consensus between both representatives both for the appellants and for the SoS that that was in fact the case.
5. It appears to us that the correct Rule to have been applied and for the First-tier Tribunal Judge to have considered was Immigration Rule 245ZX(h) which provides as follows:

“If the course is below degree level the grant of leave to remain the applicant is seeking must not lead to the applicant 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.”
6. For this reason and in the light of the effective concessions made by the parties before us we are satisfied that the First-tier Tribunal Judge materially erred in law below because he proceeded to determine the appeal by reference to the wrong Immigration Rule.
7. In those circumstances we set aside the decision below. We do so in order for there to be a fresh decision by the SoS by reference to the appropriate Rule and any other matters or submissions which are put before her on behalf of the appellants.
8. No anonymity order is sought nor is one granted. None was made below.

Notice of Decision

The appeal is allowed to the limited extent of requiring the Secretary of State for the Home Department to make a fresh and lawful decision.

Signed

Date

Mrs Justice Carr

TO THE RESPONDENT
FEE AWARD

As we have allowed the appeal and because a fee has been paid or is payable, we have decided to make a fee award of any fee which has been paid or which may be payable.

Signed

Date

Mrs Justice Carr