



**Upper Tribunal  
(Immigration and Asylum  
Chamber)** Appeal Number:  
IA/10555/2014

**THE IMMIGRATION ACTS**

**Heard at: Field House**

**On: 1<sup>st</sup> December 2014**

**Determination**

**Promulgated**

**On: 4<sup>th</sup> February 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Secretary of State for the Home Department**

Appellant

**And**

**Mrs Amandeep Kaur  
(no anonymity direction made)**

Respondent

**Representation:**

For the Appellant: Mr Duffy, Senior Home Office Presenting Officer

For the Respondent: Mr Hossein, SEB Solicitors

**DETERMINATION AND REASONS**

1. The Respondent is a national of India date of birth 15<sup>th</sup> May 1988. On the 8<sup>th</sup> September 2014 the First-tier Tribunal (Judge Bart-Stewart) allowed her appeal against a decision to refuse to vary her leave to remain and to remove her from the United Kingdom pursuant to s47 of the Immigration Asylum and Nationality Act 2006. The Secretary of State now has permission to appeal against that decision.
2. The matter is issue was whether Ms Kaur was entitled to any further leave to remain as a Tier 4 (General) Student Migrant.

She had applied for further leave to remain in that capacity in order that she could study for a BTEC Higher National Diploma in Business. The application was refused on the ground that a further grant of leave would result in Ms Kaur having spent in excess of 3 years studying at below degree level, contrary to the requirements of paragraph 245ZH (h) of the Immigration Rules. By the Secretary of State's calculations Ms Kaur had already had periods of leave totalling 1 year and 11 months; the BTEC was due to last approximately 14 months.

3. The First-tier Tribunal noted that Ms Kaur's first grant of leave had been from 1<sup>st</sup> January 2011 until the 19<sup>th</sup> January 2014. This three-year grant was to enable her to undertake a BTEC. However on the 20<sup>th</sup> November 2013 the Secretary of State had curtailed that leave because the Tier 4 Sponsor had its licence revoked, on the 30<sup>th</sup> October 2013. The First-tier Tribunal therefore calculated the period in which Ms Kaur had already undertaken sub-degree level study as being January 2011 to October 2013, a period of "22 months". Since this BTEC was going to take less than 14 months the First-tier Tribunal concluded that Ms Kaur would not have spent more than 3 years studying at below degree level and allowed the appeal.
4. The Secretary of State now appeals on the following grounds:
  - i) The relevant period for the purpose of the Rule is "the grant of leave", not the period actually studied;
  - ii) The determination contains an error of fact amounting to an error of law, since the period between January 2011 and October 2013 is in fact 33 months, not 22 as calculated by the Tribunal.

### **Error of Fact**

5. The determination does contain an error of fact. The period from January 2011 to October 2013 is not 22 months. It is, as the drafter of the grounds calculates, 33 months. This miscalculation was plainly relevant to the First-tier Tribunal's decision to allow the appeal and in those circumstances must amount to an error of law.
6. The second issue raised by the grounds is less straightforward. The Secretary of State here contends that the relevant period for the purpose of calculating the 3 years of study is the "grant of leave". Reference to the rule itself shows that this is not the case:
  - (h) 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 3 years in the UK as a Tier 4 Migrant since the age of 18 **studying** courses that did not consist of degree level study.

[emphasis added]

7. It was not therefore an error for the Tribunal to have calculated the relevant from the day at which Ms Kaur started studying, to when she stopped because the college had its licence revoked. Mr Duffy contended that there was HO guidance to the effect that periods of non-study should also be counted. Since such guidance would be plainly contrary to the clear wording of the Rule I am not prepared to construe paragraph 245ZH (h) as the Secretary of State contends.
8. I set the decision of the First-tier Tribunal aside. It contains a material error of fact which amounted in the circumstances to an error of law.

### **The Re-Made Decision**

9. Ms Kaur has studied at below degree level for the following periods since her arrival in the UK: between 31 Jan 2011 and 30 Oct 2013 she undertook a Diploma in Business & Administrative Management at Northam College (NQF level 5). She has therefore so far studied for a period of 33 months.
10. The course which she wished to take when she made this application was to run from the 27<sup>th</sup> January 2014 to the 6<sup>th</sup> March 2014, a period of 13 months and 9 days. If she is permitted to take this course she will have studied in the UK at below degree level for a total period of 46 months and 9 days. That equates to well over 3 years. Ms Kaur does not meet the requirements of paragraph 245ZH (h) and the appeal is dismissed under the Rules.
11. Insofar as Ms Kaur relies on Article 8 I am not satisfied that the Article is engaged, or if is, that any decision to remove her from the UK would be disproportionate. She came to the UK in a temporary capacity as a Points Based System Migrant and can have had no expectation of being permitted to stay beyond the period of leave granted. There are no particular features in the evidence indicating that any interference with her private life would be disproportionate.

### **Decisions**

12. The determination of the First-tier Tribunal contains errors of law and it is set aside.
13. The decision in the appeal is remade as follows: the appeal is dismissed on all grounds. There was no request that I make a direction for anonymity.

Deputy Upper Tribunal Judge Bruce  
1<sup>st</sup> February 2015