



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

Appeal Number: IA/10624/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 2 February 2015 / 20 April 2015**

**Decision &  
Promulgated  
On 14 May 2015**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**HASSAN ABDULAZIZ MBARAK  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Soloman, Counsel, instructed by Jein Solicitors

For the Respondent: Miss A Holmes, Home Office Presenting Officer

**DECISION AND REASONS**

**The Appellant**

1. The appellant is a citizen of Tanzania born on 14 October 1982. He applied on 13 January 2014 for leave to remain in the UK as a Tier 4 (General) Student Migrant under the points-based system. The appellant proposed to complete a course at the College of Advanced Studies, London E1 leading to a diploma in strategic management NQF Level 7

finishing in September 2015. The appellant entered the UK as a student in December 2006.

2. On 30 January 2014 the Secretary of State refused the appellant further leave because the CAS submitted for the application related to a new course at the institution and the sponsor register was checked on 30 January 20124 and the sponsor college was found to be a legacy sponsor. Therefore the appellant could not comply with the requirements of Appendix A 116(da)(db) and paragraph 119.
3. In addition the appellant had previously been granted leave to study at degree level or above for a period of four years and eight months. The current application related to a course at Level until 4 September 2015. This would result in the appellant spending more than five years in the UK as a student at degree level above and contrary to paragraph 245ZX(c) (ha) of the Rules.
4. The appeal was heard by Judge S Taylor on 6 October and he dismissed the appeal on 17 October 2014. The judge found that at the time of the application the college was not yet a legacy sponsor and the appellant's representative submitted a copy of the published policy and guidance which confirmed that if a college became a legacy sponsor after it had assigned a CAS the relevant student may still apply for leave and if successful the student may continue to study at the college.
5. However, with regard to refusal on the grounds of paragraph 245ZX((ha) the respondent had refused the application on the basis that the appellant had spent a period of four years and eight months. The current application was to study the level 7 diploma in strategic management NQF Level 7 until 4 September 2015. A grant of leave to study this course would result in the appellant having spent more than five years in the UK as a Tier 4 (General) Student studying courses that consisted of degree level study or above and therefore he failed to meet the requirements of paragraph 245ZX(ha) of the Immigration Rules.

#### Application for Permission to Appeal

6. Application for permission to appeal was made contending that the judge had erroneously found that the five year rather than the six year limit under paragraph 245ZX(ha) of the Rules applied on the basis that the appellant was required to demonstrate he wished to follow a Masters course and the combination of the first and Masters course may total up to six years. The appellant had completed a first and Masters course and now wished to complete an additional "diploma course".
7. It was stated that Paragraph 245ZX((ha)(i) of the Rules did not require that the appellant wished to follow a "Masters course" but instead "a course of study at ***Masters degree level***".

8. Under paragraph 6 of the Rules “degree level study” meant a course which led to a recognised United Kingdom degree at Bachelors level or above or an equivalent qualification at Level 6 of the revised National Qualifications Framework or Levels 9 or above of the Scottish Credit and Qualifications Framework.
9. Under part 8 of these Rules “postgraduate level” meant at course at Level 7 or above for the revised National Qualifications Framework or Qualification and Credit Framework or Level 11 or above of the Scottish Credit and Qualifications Framework, which leads to a recognised United Kingdom postgraduate degree at Masters level or above, or an equivalent qualification at the same level.
10. The appellant wished to follow an NQF level 7 diploma in strategic management. The *diploma was at Masters degree level* and this sufficed for the purposes of the Rules. It was irrelevant that the course was a diploma rather than a Masters degree.
11. If the judge had directed himself correctly he would have found that the six year limit applied and the grant of leave the appellant was seeking was one year seven months seven days plus the time he had spent in studying at degree level, four years and two months and twenty five days rather than four years six months. The date of determination would not lead to the appellant having spent more than six years in the UK.
12. Permission to appeal was granted by Judge P J M Hollingworth on 8 December. An error of law had arisen in the context of the construction to be placed upon the relevant Rule.

## Conclusions

13. The appeal hearing was adjourned on the basis that the exact status of the college needed to be established as at the date of decision and at the hearing before me it was accepted by Mr Solomon that the College of Advanced Studies was not a recognised body which is an institution granted degree awarding powers by Royal Charter or Act of Parliament or the Privy Counsel. By the Education (Recognised Bodies) (England) Order 2013 which was brought into force on 30 December 2014, the College of Advanced Studies was not listed. I accept that it was not a recognised body as at the date of decision.
14. At the hearing before me Mr Solomon relied on his application for permission to appeal and submitted it should be the six year limit that would apply. In effect the total periods of the length of courses would be within the six year limit.
15. Miss Isherwood submitted that Mr Solomon was asking me to ignore the previous period of study and she referred to the case of **Islam (Paragraph 245X(ha) five years study)** [2013] UKUT 608 (IAC). The purpose of the rule is to stop students from continually studying at the

same level and the rule confirms that there remains a time limit. The diploma course would take him over the five year point.

16. Despite Mr Solomon's interpretation there still remains a time limit under (ha)(i) of six years when comparing (ha)(i) with (ha)(ii) which introduces the concept of no time limit. I take the point that the appellant was intending to study at Master's degree level. However, I am not persuaded that the judge materially erred in law
17. The fact is that the College of Advanced Studies is not a recognised body and whatever level course the appellant wished to follow he was not seeking to study a Masters degree level sponsored by a sponsor that is a recognised body. Thus the appellant cannot bring himself into the exception of (ha(i)) as asserted and his appeal was bound to fail.
18. I find no material error of law in Judge S Taylor's decision and the decision shall stand.

Signed

Date 11<sup>th</sup> May 2015

Deputy Upper Tribunal Judge Rimington