



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

Appeal Number: IA/10683/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 17 June 2015
Prepared 17 June 2015**

**Decision & Reasons
Promulgated
On 7 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**SHAZIA HAIDER
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr P Nath, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Pakistan, date of birth 2 December 1971, appealed against the Respondent's decision, dated 18 February 2014, to refuse her leave to remain as a Tier 4 (General) Student with reference to

paragraph 245ZX(ha) of the Immigration Rules HC 395 as amended (the Rules).

2. Her appeal came before First-tier Tribunal Judge Callender Smith (the judge) who, on 8 October 2014, decided to refuse the appeal under the Immigration Rules.
3. Permission was given by Deputy Upper Tribunal Judge Davey on 19 March 2015. A Respondent's notice, dated 14 April 2015, supported the First-tier Tribunal Judge's decision.
4. I granted permission on one ground which related to a claim that the Secretary of State had miscalculated the time spent by the Appellant as a student at level 7 with reference to paragraph 245ZA(ha) of the Rules. It was argued, as it had been before the judge, that the Secretary of State had included periods of time over and above those actually engaged by the Appellant in level 7 study.
5. The judge in his determination set out the evidence received, which it was apparent that he accepted, but he disagreed with the Appellant over the total time that the Appellant had spent in actually studying. The judge identified the issue at paragraph 15 of the decision

“The difference between the Respondent's position and the Appellant's position lies in the difference between granted leave to study and the actual time spent studying.”

6. In evidence the Appellant recited the years (Y), months (M) and days (D), and it is not challenged by Mr Nath, of periods of extended study. First, between 19 January 2009 and April 2009 at level 4 in a Certificate in Business Studies; which is not material. Secondly at level 7 between 21 September 2009 and 14 April 2010 (Y.O M6 D24) , 15 April 2010 and 30 June 2011 (Y. M2 D15), between 31 October 2011 and 15 February 2013 (Y.O M6 D24) , and finally 16 June 2013 and 28 November 2013 (Y.O M5

D12). Those periods total three years six months and six days. Accordingly the Appellant said that the periods before and after periods of study which were granted, no doubt with reference to paragraph 245ZY of the immigration rules, identified the periods granted when leave to remain existed: Covering a short period before a course start and a period after the course ended.

7. In the circumstances the grounds for first time when renewed before me, particularly relied upon paragraph 111 of version 4/14 for Tier 4 points-based students guidance produced by the respondent.

8. Paragraph 111 stated

“In calculating the maximum amount of time that you spend studying at or above degree level, we will only include the length of course and will not take into account the additional periods of leave granted before or after your main course of study which are referred to in the table at paragraph 98.”

9. Mr Nath's research as much as mine cannot identify any table at paragraph 98. Paragraph 98 relates to a different issue.

10. Careful consideration was given as to whether paragraph 98 was to be found in Appendix 6 for Tier 4 Students but it does not. No one has been able to identify where the table in paragraph 98 was. When I gave permission to appeal on this single ground I identified that the Appellant would be required to establish that paragraphs 111 and 98 of version 4/14 Tier 4 guidance applied. In a bundle received by the Tribunal on or about 15 June 2016 extracts from the Tier 4 guidance were included but paragraph 98 and any table was not. There was, although I do not regard it as in any sense binding, a summary from the University of Warwick which was undated and may relate to a different version of the published guidance, which stated with reference to paragraph 245ZY of the Immigration Rules that the additional periods of leave granted before or

after the course start dates should not be include when calculating whether a student has exceeded the time limit: This was with particular reference to calculating a five year time period for the purposes of degree level courses.

11. Since the judge did not challenge or reject the evidence that the Appellant adduced concerning her periods of study at level 7 and the judge did not reject the course level it seemed to me that the Appellant had raised now an arguable point. For if one took the three years six months and six days and added a period of fifteen months and six days in the UK for the proposed final course (Y1M3 D6), at the London School of Business and Accountancy, the total period still remained under five years in the actual periods of study.
12. In those circumstances, Mr Nath accepted that there could with reference to the guidance be an error of law by the Secretary of State because the Notice of Immigration Decision had plainly included periods over and above that of the actual time spent at study on level 7.
13. The grounds submitted with the additional papers contain a skeleton argument which has been drafted by it would seem by someone other than the Appellant and raised a number of other issues. Given the scope of the permission granted I do not deal with them save to say that no consent was given for those matters being argued. The case of Islam [2013] UKUT 00609 does not apply to the facts of this case.
14. The Original Tribunal made an error of law. The Original Tribunal decision cannot stand.

Anonymity Order

15. No anonymity order is necessary or appropriate.

NOTICE OF DECISION

16. The matter must be returned to await the Secretary of State to determine in accordance with relevant published guidance, the periods of study and the claim under paragraph 245ZX(ha) of the Rules. The appeal is allowed to the limited extent recited above.

Signed

Date 2 August 2015

Deputy Upper Tribunal Judge Davey