



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

Appeal Number: IA/15255/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 26 March 2015**

**Determination**

**Promulgated**

**On 31 March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHAERF**

**Between**

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

Appellant

**and**

**MD SUJAN  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr S Whitwell of the Specialist Appeals Team

For the Respondent: Mr H Shamsuzzoha of Universal Solicitors

**DECISION AND REASONS**

1. The Respondent to whom I shall refer as “the Applicant” is a citizen of Bangladesh, born on 7 July 1987. On 25 March 2012 he entered with leave as a student and applied in time for further leave as a student.

## **The Decision and Appeal**

2. On 20 February 2014 the Appellant (the SSHD) refused his application under paragraph 245ZX(a) of the Immigration Rules and proposed directions for his removal under Section 47 of the Immigration, Asylum and Nationality Act 2006.
3. The SSHD noted that during the currency of his last leave the Applicant had changed the institution at which he was studying at a time when he was subject to Section 50 of the Borders, Citizenship and Immigration Act 2009. The SSHD considered the Applicant's leave had been limited to study at a named institution and that approval or further leave was required if he was to study at a different institution. Accordingly his application was refused on general grounds under paragraph 322(3) of the Immigration Rules because he had not complied with the requirements of paragraphs 245ZX(a) and 245ZW(c)(iv).
4. On 28 March 2014 the Applicant lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds run to four pages of typescript. Omitting the generic or formulaic elements, in essence the grounds are that following the SSHD revocation of the licence of the college where he had been studying, the college had come to an arrangement with another college for him to transfer his studies to that other college and that the first and the new college had come entered into some partnership or similar arrangement and the Appellant had not been advised he needed to refer the matter to the SSHD. The grounds allege the Applicant was in effect an innocent victim and should not be penalised for relying on what he had been told by the colleges where he was studying. The other grounds assert the decision places the United Kingdom in breach of its obligations under Article 8 of the European Convention to respect the Applicant's private and family life and that in reaching the decision under appeal the SSHD had not acted fairly.

## **The First-tier Tribunal's Decision**

5. By a decision promulgated on 1 December 2014 Judge of the First-tier Tribunal Owens allowed the Applicant's appeal under the Immigration Rules finding that the Applicant's second college had Highly Trusted Sponsor status and that his first college had made an arrangement with the other college to enable its students to continue their studies so that effectively the second college partially took over the first college and that "they were in fact the same institution or in the alternative that they were partner institutions": see paragraph 20 of her decision. Having allowed the appeal under the Immigration Rules the Judge did not consider the grounds of appeal based on human rights.
6. The SSHD sought permission to appeal arguing the Judge had erred in law because the second institution at which the Applicant studied held a different Sponsor licence number from the first institution where he had studied and he had failed to make a fresh application for leave to remain when seeking to transfer from one institution to the other. The Judge had

failed correctly to apply the provisions of paragraph 245ZW(c)(iv) of the Immigration Rules. Further, on the basis of the findings of fact made by the Judge she should have remitted the decision to the SSHD for further consideration and failure to do so was an error of law.

7. On 28 January 2015 Judge of the First-tier Tribunal Heynes granted the SSHD permission to appeal because it was an arguable error of law that the appeal had been allowed under the Immigration Rules when the Applicant was not studying at the institution which had issued a Certificate of Acceptance for Studies to him.

### **The Upper Tribunal Hearing**

8. At the hearing the parties informed me they had been in discussion and agreed that if the Applicant had been in breach of the conditions of his leave, such breaches were not material. Brief submissions were made by the representatives for the parties. They focused on whether the Judge's treatment of the decision under paragraph 322(3) disclosed an error of law in the reasons why she exercised her discretion in a manner different from that of the SSHD.
9. The SSHD's challenge was only to the ground given by the Judge at paragraph 21.C of her decision that the Applicant's college had been taken over by the second college which had allowed him to enrol on a new course.

### **Findings and Consideration**

10. Given the SSHD had accepted that any breaches by the Applicant of the terms of his leave to enter or remain were immaterial, and the absence of any challenge to the eight other reasons given by the Judge for finding that discretion should be exercised in favour of the Applicant, all of which were substantial and material, I find that even if the Judge made an error of law in the legal analysis of the move by the Applicant from one institution to another to continue his studies, such error was not of sufficient materiality to set aside her decision.
11. It follows that the First-tier Tribunal's decision does not contain an error of law such that it should be set aside and accordingly it shall stand.
12. The Applicant holds a "Certificate of Acceptance for Studies" issued by Queensbury College for a course to be completed on 27 March 2015, that is the day after the hearing. When considering the length of leave to be granted to the Applicant, the Respondent may wish to take this into account and grant leave for a short period.

### **Anonymity**

13. There was no request for an anonymity direction and having heard the appeal I find that there is no need for one.

### **NOTICE OF DECISION**

**The First-tier Tribunal's decision did not contain an error of law such that it should be set aside and accordingly it shall stand. The effect is that:**

**The Applicant's appeal against refusal of further leave succeeds.**

**No anonymity direction is made.**

Signed/Official Crest

Date 30. iii. 2015

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal