Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/16844/2014**

THE IMMIGRATION ACTS

Heard at Field House, London **Decision & Reasons Promulgated**
On the 19th August 2015 **On the 4th September 2015**

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

MISS OLUWASEUN OLASUMBO JABITTA
(Anonymity Direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No attendance
For the Respondent: Miss Everett (Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-Tier Tribunal Judge Carroll promulgated on the 19th November 2014, who dismissed her appeal on the grounds that she did not satisfy the requirements of paragraph 245ZX (ha) of the Immigration Rules.

Background

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2. On the 30th January 2014, the Appellant applied for Leave as a Tier 4 (General) Student Migrant and for a Biometric Residence Permit. However her application was refused by the Respondent on the 28th March 2014, on the basis that she had previously been granted leave to study courses at degree level or above for a total of 4 years and 6 months and that her current application was to study for a Global MBA until the 24th March 2015. However, it was found that a grant of leave to study this course would result in her having spent more than 5 years in the UK as a Tier 4 (General) Student studying courses that consist of degree level study or above and therefore it was held that she failed to meet the requirements of paragraph 245ZX (ha) of the Immigration Rules.

3. The Appellant appealed against that refusal decision to the First-Tier Tribunal, and her appeal was heard by First-Tier Tribunal Judge Carroll on the 10th November 2014. In his decision, the First-Tier Tribunal Judge noted that the Appellant's case was that her application for a Tier 4 visa was made under the impression that "the one year I spent studying the LPC would be exempt regardless of when I studied it." It was found at [6] that the Appellant relied upon the Tier 4 policy guidance version 09/12 but the First-Tier Tribunal Judge found that the exception in the policy guidance stated:

'Law, where the Applicant has completed a course at degree level in the UK and is progressing to:

- the Common Professional Examination;
- The graduate Diploma in Law and Legal Practice Course.'

He found that both that previous guidance and what was said to be current guidance precluded Applicants spending more than 5 years in the UK studying courses at degree level or above subject to a number of exceptions including in respect of Law, an exception where the Applicant had completed a course at degree level in the UK and is is progressing the Legal Practice Course and that the guidance envisaged current or future applications to study the Legal Practice Course ("the LPC") rather than someone who has already completed the Legal Practice Course and that therefore the Appellant was not in the position of an Applicant who is progressing to that course and that therefore she did not meet the requirements of paragraph 245 ZX (ha). The Appellant has appealed that decision to the Upper Tribunal.

4. Permission to appeal was granted by Upper Tribunal Judge Reeds when she found that:

"1. The issue in the grounds relates to paragraph 245 ZX (ha) of the Immigration Rules and it is arguable that the Judge misapplied the relevant Tier 4 guidance as to whether the time spent completing the Legal Practice Course should have been exempt from the calculation of 5 years and, thus the issue relates to the correct interpretation as to whether the legal practice course can be exempt regardless when it was completed or whether the guidance envisages that it only applies to current or future applications to study the Legal Practice Course.

2. When the appeal comes before the Tribunal, the Respondent must make sure that the Tier 4 guidance that was current at the time is made available to the Tribunal."

5. In the grounds of appeal it is argued that the First-Tier Tribunal Judge failed to consider the intention behind the relevant law and that the intention of the law was to always give exception to certain courses, including the Legal Practice Course. It is further argued that a Home Office representative had stated to the UK Council of International Student Affairs at any time spent studying on an exempt course is exempt, regardless of when it was studied and that to ignore this is to penalise the Appellant for choosing to study the LPC in 2012, as opposed to another time and the law should not be taken literally as it would have an unfair outcome.

6. On the 12th August 2015, the Tribunal received an unsigned and undated letter purporting to be from the appellant which stated:

   "Notification of Withdrawal,
   Miss Oluwaseun Olasumbo Jabitta (26th Feb 1990) residing at [ ] would like notify the Tribunal my decision to withdraw my appeal number IA/16844/2014.

   Sincerely

   Oluwaseun Olasumbo Jabitta."

7. However, that application was considered by Upper Tribunal Judge Perkins on the 14th August 2015, who found that the Appellant is not allowed to

withdraw an appeal from the Upper Tribunal without the Upper Tribunal's consent pursuant to Rule 17 (4) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and that as the letter attributed to her was not signed and offered no explanation for withdrawing the appeal, he was not prepared to consent to the appeal being withdrawn and therefore it remained in the list for hearing today. The appellant was notified of Upper Tribunal Judge Perkins' decision on the 14th August 2015 by first class post.

8. However, despite the Appellant having been given notification of the time, date and exact address of the Tribunal where the appeal was to be heard, namely at Field House, 15 Breams Buildings, London, EC4A 1DZ, and having been given notice that the appeal was to be heard on Wednesday 19th August 2015 at 2 p.m., by 3 p.m. on the day of her appeal no one had arrived on behalf of the Appellant, nor had the Appellant herself arrived, and there was no explanation for her failure to attend and no request made for an adjournment. In such circumstances, the Appellant's previous request to withdraw her appeal having been refused, and there being no attendance by the Appellant or anyone on her behalf, and no further explanation given as to any reason for wanting to withdraw the appeal or confirmation that the Appellant indeed had written the letter sent to the Tribunal, I considered that it was in the interest of justice to continue with the appeal in the absence of the Appellant and that it would be contrary to the overriding objective to consider the appeal as being withdrawn in such circumstances, as I again could not consent to any withdrawal, that having previously been determined against the Appellant, without any further explanation as to any reason for her wanting to withdraw her appeal, or confirmation that she indeed had actually written and signed the letter sent to the Upper Tribunal. Nor did I consider it to be in the interest of justice considering the overriding objective to deal with cases fairly and justly that any adjournment should be granted, when no such adjournment was sought.

9. I therefore proceeded to hear submissions from Miss Everett on behalf of the Respondent. She handed up what she said was the applicable Home Office Guidance that was valid between January 2014 to date and that in respect of Law, it was stated that the exceptions to the maximum of five-year study at degree level or above for the purposes of paragraph 245 ZX (ha) that the

"applicant must have completed a course at degree level in the UK and be progressing to:

- A Law conversion course validated by the Joint Academic Stage Board (England and Wales), a Masters in legal science (Northern Ireland) or an accelerated graduate LLB (Scotland);
- The Legal Practice Course (England and Wales) or the solicitors course (Northern Ireland) or a diploma in Professional Legal Practice (Scotland)
- The Bar professional training course (England and Wales) or the Bar course (Northern Ireland)."

Miss Everett argued that under the policy applicable at the time, it was only if the Appellant was progressing to the LPC course, that it would not be taken into account in calculating the five-year period of study at degree level or above. As the Appellant has already completed her legal practice course and was wishing to progress onto a different course of study, she argued it did count towards the Appellant's maximum of five-year study at degree level or above and argued that on this basis the decision of the First-Tier Tribunal Judge was correct and disclosed no material error of law and she asked me to dismiss the appeal.

My Findings on Error of Law

10. Although within her Grounds of Appeal to the First-Tier Tribunal, the Appellant sought to rely upon an email by the UKVI to the UK Council of International Student Affairs which was said to be dated the 12th July 2013 that had stated "There is no change in the policy intention here. Any time spent studying these courses still does not count towards the five-year, be that current or previous study" and that the UK Council of International Student Affairs had published this excerpt in a publication on the 14th November 2013, in her Grounds of Appeal she conceded that all attempts to have the actual email released as evidence had been refused by the UK Council of International Student Affairs, to protect the identity of the UKVI representative who made the statement. I have to bear in mind that it is for the Appellant to prove that the decision of the First-Tier Tribunal Judge involved the making of a material error of Law. She has not produced the email said to have been sent to the UK Council of International Student Affairs, and irrespective of the reason, without any such email, I am not in position to conclude that an email was sent, that in any material way changed or was different to the published guidance.

11. Although in the UK Council of International Student Affairs special briefing publication on the 14th November 2013 entitled "A summary of recent

immigration changes summer-autumn 2013" it was stated that the provision of any time spent studying one of the accepted courses listed in paragraphs 245 ZX (ha) (iii) of the Rules does not count towards the five-year cap, had been omitted from the Tier 4 policy guidance and sponsor guidance since the 1st July 2013, but that the Home Office had confirmed in an email that there was no change in the policy intention here and any time spent towards studying these courses still does not count towards a five-year cap be that current or previous study, I do not consider that this in itself amounts to sufficient evidence that the Respondent had by virtue of an email changed the policy guidance so that it was in fact different to what was stated in the published guidance document. Without having seen the email itself, I am not in a position to be able to determine who sent the email, or as to whether or not the actual contents of such email are as described in the UK Council of International Student Affairs publication, or as to whether or not the person who is said to have sent the email had authority to send it and bind the Respondent in terms of any change or clarification of the Respondent's published policy guidance. The UK Council of International Student Affairs special briefing publication simply amounts to their interpretation of the email and the policy, rather than sufficient proof of the email contents itself.

12. In such circumstances, having considered the policy guidance which was submitted to me as being the policy guidance current at the time by Miss Everett on behalf of the Respondent, it is clear that in respect of Law, "the Applicant must have completed a course at degree level in the UK and be progressing to:… The legal practice course (England Wales)." In such circumstances it was perfectly open to the First-tier Tribunal Judge to find that the policy guidance envisaged current or future applications to study the legal practice course, as opposed to someone in the position of the Appellant who had already completed two courses at degree level amounting to a total of 4 years and who had undertaken the Legal Practice Course in 2011/2012 and was then wanting to study for an MBA. I agree with the interpretation of First-tier Tribunal Judge Carroll that the Appellant was therefore not <u>progressing</u> to the Legal Practice Course, she had already completed it. The decision of First-Tier Tribunal Judge Carroll thereby does not disclose any error of law.

13. I do not accept the contention of the Appellant that the intention behind the guidance was to give exemption to certain courses, including the LPC, irrespective of when they were studied, as the wording of the guidance itself in respect of Law specifically refers to applicants "progressing to" the LPC. In respect of courses in architecture, medicine, dentistry, veterinary medicine and science, there was said to be no maximum period for those students, save that if a student applied for leave or an extension of leave for one of those courses, it should be refused if the grant of leave for that course would lead to the student having spent more than 8 years studying in the UK at degree level or above and they have already completed a PhD, and therefore in respect of those courses it appeared to make no difference as to when any previous course was completed. However, in respect of the Law section of the policy, the wording is different in that the word specifically refers to the Applicant "progressing to: … the Legal Practice Course". I therefore do find that it was open to the Judge to find that the guidance on Tier 4 (General) Students required them to be progressing to the Legal Practice Course in order for her attendance on the Legal Practice Course not be considered for the five-year cap and that therefore it did matter as to when the Legal Practice Course was completed. This further makes sense from a policy point of view, in that the Respondent may well not wish to prevent people from becoming lawyers as a result of the five-year cap, if they are then as a result unable to complete their final parts of their professional qualifications in terms of the Law Conversion Course, the Legal Practice Course or the Bar Professional Training Course, but that if those courses are simply part and parcel of a portfolio of courses studied by the Appellant and she had already completed the course and was wishing to then go on to a completely different course of study for her MBA, the time spent studying on that Legal Practice Course should be taken into account in respect of the five-year cap. I therefore do not consider that the guidance does mean anything other than what it says or that the application of the guidance to the Appellant results in an unfair outcome. The decision of First-Tier Tribunal Judge Carroll does not disclose any material error of law and shall stand.

Notice of Decision

The decision of First-Tier Tribunal Judge Carroll does not disclose any material error of law and shall stand.

The First-Tier Tribunal did not make an order pursuant to Rule 13 of the Tribunal Procedure (First-Tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and no application for an anonymity order was not made before me. No such order is made.

Signed

Rob McGinty

Deputy Upper Tribunal Judge McGinty Dated 19th August 2015