



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: IA/19425/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 23 December 2014**

**Decision & Reasons
Promulgated
On 13 January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

**MISS CHAO CHEN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant's appeal against decisions to refuse to vary her leave and to remove her from the United Kingdom by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006 was dismissed by First-tier Tribunal Judge Oakley ("the judge"), in a determination promulgated on 3 October 2014. The adverse decisions were made in the light of the Secretary of State's finding that taking into account the level 8 doctoral diploma course the appellant had enrolled on, the total

period of time spent studying at degree level or higher in the United Kingdom would be greater than five years. As such, her application fell to be refused under paragraph 245ZX(ha) of the Immigration Rules (“the rules”).

2. Before the First-tier Tribunal, the appellant (who appeared in person) argued that her level 8 doctoral diploma in strategic business research and leadership direction would lead to the award of a PhD and so she fell within one of the exceptions to the rules and was permitted to study for more than five years as a Tier 4 (General) Student Migrant. The judge concluded in the light of the evidence before him that there was nothing to show that the appellant's course would lead to the award of a PhD. He also found that a PhD is different from a doctorate in a particular subject as it is in its own right a doctorate of philosophy. He dismissed the appeal.
3. The appellant was given permission to appeal, on the basis that it was arguable that the judge may have made a perverse or irrational finding on a material matter, in defining a PhD as he did. The level 8 diploma course was at a doctoral level.
4. In a Rule 24 response, dated 26 November 2014, the appeal was opposed. The Secretary of State had expressly found that the appellant’s application for leave was to enable her to study for a level 8 diploma, not for a doctorate. It followed that refusal of the application was correct, as was the judge’s decision to dismiss the appeal.
5. The appellant provided a supplementary bundle, in support of her grounds. This consisted of an extract from the Oxford English Dictionary, notes provided by De Montfort University to undergraduate students and material downloaded from Future College’s website (her course provider). Save for the extract from the dictionary, these items were before the judge at the First-tier Tribunal hearing.

Submissions on Error of Law

6. I explained the procedure to be followed to the appellant. She attended with a colleague who acted as a Mackenzie friend (Mr Melvin had no objection to the colleague assisting the appellant). Mr Melvin handed up a copy of the judgment of the High Court in **Syed [2013] EWHC 984**.
7. Miss Chen said that, as explained in her application for permission to appeal, the judge considered that a PhD was different from the doctoral qualification she sought. It was clear, however, from the Oxford English Dictionary that they were the same. A doctorate

was the highest degree awarded. She considered that her level 8 doctoral diploma was the same as a PhD. Courses at level 8 were regarded as at doctoral level. Miss Chen would receive a doctoral diploma and this met the requirements of the rules. The attachments from Futures College and De Montfort University supported her case.

8. What the Home Office required was a course leading to a PhD and not a PhD course. The course Miss Chen had enrolled on led to a level 8 doctoral diploma and there was no distinction between this and a PhD. This was why she fell within one the exceptions to the rules, which the Secretary of State set out in the letter giving reasons for the adverse decisions, on the second page at the top. There was no difference between a PhD and a doctoral diploma. Futures College was approved by the Secretary of State.
9. Mr Melvin said that there was no issue with the appellant's choice of college or course. However, the course she had chosen had the consequence that at the end of it she would have studied for more than five years at degree level or above. That was why her application for further leave was refused. There was nothing in the documentary evidence showing that at the end of her course she would be awarded anything other than a diploma in strategic business research and leadership direction. The exception in the rules which she relied upon required her to follow a course leading to a PhD. If the Secretary of State had in mind a course leading to a level 8 doctoral diploma, the rules might have said so. The particular course, albeit at level 8, did not lead to the award of a PhD. There was an analogy with Syed and ACCA qualifications, although that case was not exactly on all fours with the present appeal. The court found that an ACCA qualification could not be considered as a degree for the purposes of the rules. Similarly, a level 8 diploma would not meet the requirements of the rules, as a PhD award was identified as the required end result.
10. It followed that the judge had made no material error of law.
11. In a response, Miss Chen said that she was told by the college that students in similar circumstances were given visas. The course she had enrolled on ought not to be taken into account in calculating the five years. She consulted education agents and was told that so long as the level 8 course was recognised, she should get the visa. Miss Chen said that she had decided to apply for a doctoral diploma so that she could pursue her ambition to become an academic researcher. The Syed case concerning the ACCA qualification was wholly different. The ACCA qualification was a professional one, equivalent to a degree, albeit not a degree in itself. She did not intend to study on a professional course at all. The judge had made a mistake because the diploma course at

level 8 led to a PhD and so she could rely on the exception to the rules. She had a very good academic record.

Conclusion on Error of Law

12. There is no reason to doubt that Miss Chen is anything other than an accomplished student. She intends to become an academic researcher. She enrolled on a level 8 doctoral diploma course, at Futures College, but her application for further leave was refused by the Secretary of State as her course would result in her spending more than five years studying in the Tier 4 category at degree level or above.
13. Miss Chen sought to show that she fell within one of the exceptions to the rules, contending that her course would lead to the award for a PhD. The judge disagreed, finding in paragraph 13 of his determination that the documentary evidence did not show that Miss Chen would be awarded a PhD at the end of her course. I conclude that this finding by the judge was open to him and that he did not err in this respect. This is so even if he did err in describing a PhD as different from a doctorate. That observation was not material to his primary finding that Miss Chen's course would not lead to the award of a PhD.
14. The rules themselves are clear and expressly refer to the award of a PhD. The material before the judge from De Montfort University and from Futures College shows, also very clearly, that the appellant's course does not lead to the award of a PhD. It leads instead to a level 8 doctoral diploma. The material from the college and the university do not seek to describe the diploma as a degree. Miss Chen relied upon an extract from the Oxford English Dictionary, where a doctorate is defined as "the highest degree awarded by a university faculty or other approved educational organisation" and a doctor of philosophy as "a person holding a doctorate in any faculty except law, medicine or sometimes theology". It is clear, however, that a degree and a diploma are not the same, even if both have been assessed in the Qualifications Framework as being at level 8. A course overview, learning objectives, and method of assessment all appear in the material downloaded from Future College's website but in none of that material is there any suggestion that the diploma on offer is the same as a degree. Indeed, the entry requirements make a clear distinction between holders of a degree and holders of a diploma. There was simply no documentary evidence before the judge (or before me) that the appellant's course is one which leads to a qualification which is anything other than a diploma, albeit at doctoral level.

15. Miss Chen said that students in similar circumstances to hers received visas. There were no details of any individual cases before me but, of course, she is entitled to draw any such cases to the Secretary of State's attention, perhaps in support of another application. I conclude, however, that the judge made no error of law in his primary finding that the course she enrolled on was not one which led to a PhD. I reach that conclusion even though the judge's description of a PhD as being different from a doctorate is not on all fours with the definition Miss Chen has found in the Oxford English Dictionary.
16. The decision of the First-tier Tribunal contains no material error of law. The decision to dismiss the appeal shall stand.

DECISION

17. The decision of the First-tier Tribunal contains no material error of law and shall stand.
18. There has been no application for anonymity at any stage in these proceedings and I make no order on this occasion.

Signed
2014

Date **23 December**

Deputy Upper Tribunal Judge R C Campbell