



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

Appeal Number: IA/39519/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13 August 2015**

**Decision & Reasons Promulgated  
On 20 August 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR MOHAMMAD DAWAN PANNAN SAZZAD  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer

For the Respondent: Mr A Rahman, Legal Representative from MQ Hassan Solicitors

**DECISION AND REASONS**

**Introduction**

1. For ease of reference, I shall refer to the Appellant as the Secretary of State, and the Respondent as the claimant.
2. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Narayan (Judge Narayan), promulgated on 15 January 2015, in which he allowed the claimant's appeal. That appeal was against the Secretary of State's decision, dated 18 September 2014, to refuse to vary

the claimant's leave to remain as a Tier 4 Student, and to remove him from the United Kingdom under section 47 of the Immigration, Asylum and Nationality Act 2006.

3. The claimant is a national of Bangladesh and was born on 1 June 1980. He has been in this country since 19 February 2008, always with leave as either a Tier 4 Student or a Tier 1 Highly Skilled Post-Study Migrant. On 16 August 2014 he made an application for further leave to remain as a Tier 4 Student. The funds relied upon derived from a loan provided to the claimant by the National Credit and Commerce Bank Limited. A letter from that institution, dated 6 August 2014 and confirming the loan and the availability of 2,000,000 taka, was submitted with the application.
4. The Secretary of State refused the application because it was concluded that the loan was not one provided by a source identified under Paragraph 1B(d)(7) of Appendix C to the Immigration Rules. As a result, the Appellant could not be awarded any points under Appendix C and the application fell to be refused under Paragraph 245ZX(d) of the Rules.
5. The claimant is married, and his wife has been a dependent on him since her arrival in the United Kingdom on 28 September 2013. She too applied for an extension of leave. She too was refused, on the ground that the claimant's application had been unsuccessful.

### **The decision of Judge Narayan**

6. Before Judge Narayan, the thrust of the Secretary of State's case appears to have been that the claimant should have provided a letter from the national regulator of the National Credit and Commerce Bank Limited, that being the Bank of Bangladesh. The claimant argued that no such letter was required under Appendix C. Judge Narayan concluded that a letter from the national regulator was not in fact required, and that the letter provided by the claimant was sufficient to satisfy Paragraph 1B(d) of Appendix C (see paragraph 19 of the decision). This being the only live issue before him, the appeal was duly allowed.
7. The claimant's wife's appeal was linked to his, and Judge Narayan allowed her appeal as well.
8. The Secretary of State sought permission to appeal on the basis that a letter from the national regulator was required. On the basis of the grounds, permission to appeal was granted by First-tier Tribunal Judge McDade on 12 March 2015. It is to be noted that for some unknown reason only the decision in the claimant's appeal was challenged.

### **The hearing before me: application to amend the grounds of appeal**

9. Mr Duffy made an application to amend the Secretary of State's grounds. He accepted that the original grounds were misconceived: there was no requirement under Paragraph 1B(d) of Appendix C for a letter from the national regulator. His amended ground, drafted only a day prior to the

hearing, relied instead on the requirement under Paragraph 1B(d)(7) that any loan must be, “provided by the national government, the state or regional government or a government sponsored student loan or is part of an academic or educational loans scheme.” The claimant’s loan was a commercial one only, and as such did not satisfy the requirement.

10. Mr Duffy apologised for the lateness of the application, but explained that he had only received the file the day before. Nonetheless, he submitted that the amended ground had real merit, and the point had been raised in the Secretary of State’s original decision letter.
11. Prior to deciding on the application, I gave Mr Rahman time to read the amended ground and to consider his position.
12. Mr Rahman opposed the application. The Secretary of State was accepting that the original ground of appeal, upon which permission to appeal was granted, was flawed. He was unsure whether rule 5(3)(c) of the Upper Tribunal’s Procedure Rules allowed for the amendment of grounds in the manner sought by Mr Duffy. He confirmed that he was prepared to deal with the substance of the new ground if required to do so.
13. I granted Mr Duffy’s application and permitted that amendment of the grounds of appeal, pursuant to my discretionary power under rule 5(3)(c) of the Upper Tribunal’s Procedure Rules, in conjunction with rule 2 of those rules. My reasons for this are as follows.
14. First, the amended ground has clear merit. The requirement that the loan was derived through a specified source is a mandatory one rather than a matter of discretionary judgment, and on the face of the evidence it is at the very least strongly arguable that the requirement was not met.
15. Second, the provision was in place as at the date of the claimant’s application and the hearing before Judge Narayan. It was the single basis of refusal in the Secretary of State’s decision letter. To this extent, the point had been raised previously and was, in reality, an obvious one.
16. Third, I fully appreciate that the original grounds of appeal relied on by the Secretary of State were, as acknowledged by Mr Duffy, misconceived. To that extent, permission to appeal was granted on a mistaken premise. However, this does not deprive me of *jurisdiction* insofar as rule 5(3)(c) of the Procedure Rules is concerned. What I must do of course is to exercise that discretion justly and in accordance with the overriding objective and all other relevant factors. This I have sought to do within the reasons given for my decision to permit the amendment.
17. Fourth, Mr Rahman had time to consider his position and confirmed that he was prepared to deal with the substance of the new grounds. He has not sought an adjournment. Thus, I conclude that there is no prejudice to him or the claimant in allowing the amendment insofar as fairness at the hearing is concerned.

## **The hearing before me: submissions on the amended grounds of appeal**

18. Mr Duffy relied on his amended grounds. The policy behind the requirement in Paragraph 1B(d)(7) of Appendix C was that the loan should not be an additional immediate drain on the applicant's funds. The loan must be part of a scheme, much like that in place in the United Kingdom. In the present case, the Appellant's loan did not satisfy the requirement of the Rules and Judge Narayan materially misdirected himself by concluding that it did, or at least failing to deal with the issue at all.
19. Mr Rahman submitted that the letter from the National Credit and Commerce Bank Limited stated that the loan was "an education loan", and therefore satisfied Paragraph 1B(d)(7) of Appendix C. There was no error by Judge Narayan.

## **Decision on error of law**

20. Whilst I have some sympathy for Judge Narayan, I conclude that he did materially err in law by failing to consider the specific mandatory requirement of Paragraph 1B(d)(7) of Appendix, or implicitly concluding that the claimant's loan did satisfy that requirement.
21. Paragraph 1B(d)(7) read, as at the date of decision:

“(7) the loan is provided by the national government, the state or regional government or a government sponsored student loan company or is part of an academic or educational loans scheme.”
22. Applying the natural and ordinary meaning of the words used in that mandatory provision, it is clear to me that the loan relied on must emanate from one of the specified sources. A purely commercial loan from a bank, even if stated by that institution to be for the purposes of education, is not sufficient to satisfy the requirement.
23. Judge Narayan, whilst distracted from this core provision by the submissions of the Presenting Officer, nonetheless was fully aware of the contents of the Secretary of State's decision letter (see paragraph 5) and was bound to assess whether the claimant satisfied the various mandatory requirements of Appendix C. He clearly failed to specifically address Paragraph 1B(d)(7) in his conclusions. Alternatively, he may have implicitly decided that the loan did satisfy that provision. On either scenario, he materially erred. This is because the claimant's loan simply could not satisfy the requirement in question. The loan came from the National Credit and Commerce bank Limited, but it clearly was not provided under an "educational loans scheme", as required by Paragraph 1B(d)(7). The loan was, in reality, a purely commercial loan, albeit one which was based upon the claimant's intention to use it for educational purposes.
24. In light of the above, I set aside the decision of Judge Narayan.

**Re-make decision**

25. Both representatives were agreed that I should go on and re-make the decision on the evidence before me.
26. In doing so, I refer back to what I have said in paragraph 23, above. The claimant's loan is not one that could satisfy the requirements of Paragraph 1B(d)(7) of Appendix C. Therefore, he is not entitled to points under that appendix. In turn, he cannot meet the requirements of Paragraph 245ZX(d) of the Rules.
27. The appeal must fail under the Rules.
28. There is no other ground upon which the claimant relies in his appeal before me.
29. In respect of the claimant's wife, her successful appeal before Judge Narayan stands at the present time, as it has not been challenged. What the Secretary of State does next is entirely a matter for her.

**Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.**

**I set aside the decision of the First-tier Tribunal.**

**I re-make the decision by dismissing the appeal under the Immigration Rules**

Signed

Date: 17 August 2015

H B Norton-Taylor  
Deputy Judge of the Upper Tribunal

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date: 17 August 2015

Judge H B Norton-Taylor  
Deputy Judge of the Upper Tribunal