Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/00176/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15th July 2016	**On 25th July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR MUHAMMAD HAROON YOUNAS
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No legal representation
For the Respondent: Mr S Whitwell (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge I Malcolm, promulgated on 19th November 2015, following a hearing at

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Hatton Cross on 13th November 2015. In the determination, the judge dismissed the appeal of Muhammad Haroon Younas, who subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, who was born on 11th June 1988 and is 28 years of age. He appealed against the decision of the Respondent dated 2nd February 2015, refusing his application for leave to remain in the United Kingdom as a Tier 4 (General) Student.

The Appellant's Claim

3. The Appellant's claim is that although the appeal was arranged for 28th September 2015, he submitted a letter on 25th September enclosing a copy letter from his GP requesting an adjournment to 14th October 2015, as he was suffering from a back injury, but this adjournment was refused and it was communicated to him, but the Appellant still did not attend on 28th September 2015. Second, the Appellant detailed that he did not complete his course during his interview and had not obtained any qualifications but is now doing a different course which he intends to complete "it being his intention to obtain some diploma in the UK" (paragraph 11). The Appellant confirmed that he will be studying at Docklands Academy, and that the course had four semesters, and that he had started two semesters.

The Judge's Findings

4. The judge, who did not have the benefit of having the Appellant in attendance, but also did not have the benefit of having the Respondent in attendance, determined the appeal "on the papers" and held that the Appellant had been "unable to give clear answers as to the job which he would be able to get with the qualifications which he is studying" (paragraph 19). But more importantly when asked, about whether the course was still continuing, his answer was, "still it is continuing because you just deposit the fees and go and give the paper" (paragraph 21). The judge observed that, "the Appellant's application was refused as the Respondent was not satisfied that the Appellant was a genuine student" (paragraph 22). This was a case where "there was no CAS certificate with the papers" (paragraph 24) and this being so, the judge could not dispute the Respondent's decision to award no points for Confirmation of Acceptance for Studies. The Appellant had been given the opportunity to supply further evidence but had failed to do so (paragraph 26). The failure of the Appellant to provide further documentation was fatal to his appeal (paragraph 27). The appeal was dismissed.

Grounds of Application

5. The grounds of application state that the judge misdirected himself at paragraph 9 of the determination by placing reliance upon the Respondent's "erroneous decision" not to award the Appellant any points for a valid CAS because this was not the issue, given that the refusal was by reference to paragraph 245ZX(o) of the Immigration Rules.

6. On 17th June 2016, permission to appeal was granted on the basis that the failure to make a finding in relation to the core issue of paragraph 245ZX(o) at paragraph 22 may be an error although, "any error may be found not to be material".

Submissions

7. At the hearing before me on 15th July 2016, the Appellant was unrepresented, and indicated that he did not have any legal representation, and was content to represent himself. He submitted that at the time of the hearing he did not send the bundle of documents as he did not have a CAS but he has now fulfilled all the requirements. He was asked to explain this further but was unable to do so.

8. For his part, Mr Whitwell submitted that he would rely upon his Rule 24 response dated 7th July 2016. This demonstrated that Judge Malcolm had indeed made findings in relation to the core issue of refusal under paragraph 245ZX(o) by taking a cumulative approach to the findings as a whole in the determination. Mr Whitwell submitted that the judge had made his reasons clear at paragraphs 21 and 22 for why the decision of the Respondent was correct. This was an open and shut case.

9. For his part, Mr Younas submitted that he could not understand what was said at paragraphs 21 and 22. The relevant paragraphs were drawn to his attention by Mr Whitwell who helpfully undertook to do so, but the Appellant said that he could now satisfy the Rules.

No Error of Law

10. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.

11. First, there is a letter from UK Visas and Immigration dated 5th December 2014 addressed to the Appellant in person at his Ilford address. This makes specific reference to paragraph 245ZX(o) and sets out the reasons for why it was concluded that the Appellant was not a genuine student. At question 7 of the interview, the Appellant was asked, "Why have you chosen to study in the UK?" and he had replied that at the time when he was doing his ACCA, "My father said if you complete some paper I will send you in UK so I will try my best to pass the paper …". This answer brought into doubt the Appellant's intention to study as he was not clear about the reason for doing so.

12. Second, at question 19 he was asked, “Why have you chosen this new course at this level?” and the Appellant simply said,

> “Uh this one in the UK? Uh, I have chosen this one course because it is also related to ACCA you know, accounting and finance so that’s why I will choose this one, it is more easy for me because I already study this one course so when I choose this one it is quite easy for me to study this one”.

13. He was asked at question 21 how this course related to his previous course and he had said that it related to cost accounting and the ACCA quality management. Given that in both his answers the Appellant had said that the course related to accounting and finance, he could not be a genuine student because the Sponsor’s website demonstrated that none of the modules were accounting related.

14. Third, the course was mainly teaching business management and leadership. When the Appellant was asked at question 20 if he could provide an overview of the current course and how many modules there were, he had said, “I think it has four semester” but the Appellant had failed to give sufficient explanation of the course’s contents at all. It was when considering these matters that the judge stated that the Appellant was not a “genuine student” (paragraph 22). The judge did so after himself noting (at paragraph 21) that the Appellant had said that the course was continuing because all one had to do was to “deposit the fees and go and give the paper”.

15. What the judge might possibly have done, in order to make matters absolutely clear was to have made his own clear finding that the Appellant was not a genuine student, but this was not a material error of law that would have led to a different decision being made. The judge was correct (at paragraph 28) to note that the burden of proof lies with the Appellant. The grounds simply amount to a disagreement with the adverse outcome of the appeal without identifying any arguable error of law. As the grant of permission noted, if the letter relied upon by the judge, namely the Home Office letter of 7th July 2016, demonstrated that rational reasons existed for the conclusion arrived at, then, “any error may be found not to be material”. I find this to be the case here.

<u>Notice of Decision</u>

16. There is no material error of law in the original judge’s decision. The determination shall stand.

17. No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Juss 23rd July 2016