Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/10071/2015

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 5 February 2016	**On 10 February 2016**
Prepared on 5 February 2016	

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

ZHIXIANG LIANG
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No attendance
For the Respondent: Mr Kingham, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, born 24 March 1991, is a citizen of China. He first came to the UK to study with a valid grant of entry clearance as a Tier 4 student on 15 September 2013, and on 27 September 2014 he applied for a variation of his leave to remain in the same capacity. On 4 February 2015 the Appellant was interviewed by the Respondent. That interview prompted a decision on 26 February 2015 that he was not genuinely able to undertake the course he had applied to follow, and was not genuinely able to communicate in English at the standard he had claimed to have in

his application, taken by reference to paragraphs 245ZX(da) and 245ZX(o) of the Immigration Rules. As a result the application was refused and a removal decision was also made on that date pursuant to s47 of the 2006 Act.

2. The Appellant duly appealed against those immigration decisions. His appeal was heard on the papers filed at his request, on 12 June 2015 and dismissed under the Immigration Rules and on Article 8 grounds in a Decision promulgated on 22 June 2015 by First Tier Tribunal Judge PA Grant-Hutchison.

3. The Appellant's application to the First Tier Tribunal for permission to appeal was granted by Judge Colyer on 15 October 2015. The grant of permission is made on the basis it is arguable the Immigration Officer who interviewed the Appellant was not qualified to assess his fluency in English, and that the Judge gave no consideration to the Appellant's explanation for his performance at the interview, or to the fact that he had already been awarded a degree by Sunderland University and had previously been awarded a qualification to show that he had the appropriate level of fluency in English.

4. Thus the matter comes before me.

The decision under appeal

5. The Appellant produced in support of his application a CAS that had been issued to him by the University of Sunderland which declared that his fluency in English had been assessed as equivalent to CEFR B2 by reference to the 2:2 degree that had already been awarded to him by that University in Banking and Finance.

6. Notwithstanding the award of that degree, and the Appellant's previous award of an English qualification, on 4 February 2015 the Appellant was interviewed by the Respondent, by reference to paragraph 245ZX(da);

> *(da) The applicant must, if required to do so on examination or interview, be able to demonstrate without the assistance of an interpreter English language proficiency of a standard to be expected from an individual who has reached the standard specified in a Confirmation of Acceptance for Studies assigned in accordance with Appendix A paragraph 118(b) (for the avoidance of doubt, the applicant will not be subject to a test at the standard set out in Appendix A, paragraph 118(b)). (01.10.2013 HC 628)*

7. The Appellant's performance at that interview resulted in the decision on 26 February 2015 that he was not genuinely able to undertake the course he had applied to follow, and that he was not genuinely able to communicate in English at the standard he had claimed to have in his application, by reference to paragraphs 245ZX(da) and 245ZX(o);

(o) the Secretary of State must be satisfied that the applicant is a genuine student.

8. The application was thus refused and a removal decision was also made by reference to s47.

Error of Law?

9. Paragraph 245ZX(da) is a separate free standing provision in the Immigration Rules, which the grant of permission to appeal appears to have overlooked. If required to do so, a claimant must submit to such an interview, and demonstrate an appropriate level of fluency to the interviewing officer – whatever the previously earned qualifications relied upon. This provision is a necessary and sensible precaution against abuse of the Immigration Rules. There was no suggestion in this appeal that the Respondent had abused her powers in requiring the Appellant to attend for interview, and the evidence did not permit the Appellant to pursue an argument that the Respondent had misrepresented his performance at the interview.

10. The grounds seek to argue that the Tribunal went behind the evidence relied upon by the University of Sunderland to assess the Appellant's language fluency, without having sufficient evidence to rebut that assessment, so it usurped the function and powers of the University. There is no merit in that argument because it ignores the existence of paragraph 245ZX(da), and it assumes, wrongly, that the fluency assessment undertaken by the University when issuing a student's CAS is somehow to be taken by both the Respondent and the Tribunal under the Immigration Rules as conclusive of the level of fluency attained by an individual student.

11. As a result of the Appellant's request that the appeal be determined upon the papers filed the Judge had no opportunity to hear him give evidence. The Judge did however have the full record of interview before him, and it is plain from his decision that he reviewed it with care. Having done so, he gave entirely adequate reasons for the decision that he was satisfied the Appellant could not understand eleven of the thirty six questions posed to him. The Judge also considered the Appellant's explanation for his performance at the interview, and rejected it, with entirely adequate reasons, as he was entitled to do.

12. In the circumstances there was never any merit in the grounds of appeal, and permission should not have been granted because they were unarguable.

13. I am told today that the Appellant voluntarily left the UK on 30 September 2015. As a result his appeal was abandoned before permission was granted to him to challenge the decision.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 22 June 2015 did not involve the making of an error of law in the decision to dismiss the appeal that requires that decision to be set aside and remade. The decision to dismiss the appeal is accordingly confirmed.

Direction regarding anonymity – Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

The Appellant did not seek anonymity before the First Tier Tribunal, and no request for anonymity is made to me. There appears to be no proper basis for the Upper Tribunal to make such a direction of its own motion.

Deputy Upper Tribunal Judge JM Holmes
Dated 5 February 2016