



IAC-AH-SC-V1

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

Appeal Number: IA/26563/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 1 December 2015**

**Decision & Reasons Promulgated
On 13 January 2016**

Before

**THE RIGHT HONOURABLE LORD BOYD OF DUNCANSBY
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE ESHUN**

Between

**MR ABDUL KAYUME MUMIN
(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 S Kandola, HOPO

DETERMINATION AND REASONS

1. The appellant is a citizen of Bangladesh born on 21 August 1990. He appeals the decision of First-tier Tribunal Judge Horvath dismissing his appeal against the decision of the respondent made on 12 June 2014 refusing him leave to remain in the UK as a Tier 4 (General) Student under the points-based system ("PBS"). The respondent refused the application because the appellant failed to meet the requirements of paragraph 245ZX(a) as he had been refused under one of the general grounds for refusal set out in paragraph 322(3) of the Immigration Rules.

2. The appellant submitted with his application on 19 May 2014, a certificate and a transcript both dated 25 April 2014 and a course completion letter dated 12 May 2014 from London West Valley College (“West Valley”) for an EBMA Graduate Integrated Diploma in Business Administration. However, he was granted leave to study a Diploma in Business Management at London Churchill College (“Churchill”) commencing on 21 November 2011 until 21 January 2014. The appellant did not submit a fresh application for leave to study an EBMA Integrated Diploma in Business Administration. He was therefore in breach of Section 50 of the Borders, Citizenship and Immigration Act 2009 by commencing this study. The Secretary of State was therefore not satisfied that the appellant has complied with the conditions attached to his leave to remain.
3. On 28 January 2015 First-tier Tribunal Judge Osborne granted the appellant permission to appeal Judge Horvath’s decision.
4. The appellant’s appeal was heard by Deputy Upper Tribunal Judge Chana on 17th March 2015 who upheld Judge Horvath’s decision as not being materially erroneous in law. DUTJ Chana held that as such the Secretary of State’s appeal must be allowed. The appellant appealed DUTJ Chana’s decision and Upper Tribunal Judge Perkins granted permission because he found that there was no appeal by the Secretary of State. In the circumstances it was very hard to see how the appellant can be confident that his case was considered properly. On the basis of Judge Perkins’ decision, the Court of Appeal quashed the determination of DUTJ Chana 5 October 2015 and remitted the appeal to the Upper Tribunal for reconsideration.
5. The appellant represented himself at the hearing. He contended as he did in his response to the reasons for refusal, and in his evidence to the judge, that he did not breach any Immigration Rules because he did not leave Churchill or ceased studying with them. Whilst he was undertaking the diploma course at Churchill, he also undertook a supplementary course of study, that is the EBMA graduate integrated diploma in business administration at West Valley as an additional course by way of an extra measure to secure his career. He stated that he was permitted to do so simultaneously with his main course according to the respondent’s Tier 4 policy guidance.
6. The judge was satisfied on the evidence that the appellant was awarded the qualification certificate EBMA dated 25 April 2014. This was following his successful completion of the course at West Valley. She found that this evidence strongly indicated that although the appellant might well have continued to follow the course at Churchill, and that he might well have stayed with that college, the focus on his studies had shifted from Churchill to West Valley, such that the EBMA course at West Valley, which he might well have originally intended as a supplementary course, had taken precedence and had become the main course.
7. We find that the judge erred in two ways:

8. The first error was in respect of the judge's finding that the appellant's failure to produce a qualification certificate for the ATHE diploma or the EBMA graduate diploma (pursued at Churchill) strongly indicated that he had not taken the appropriate examinations or that he had failed them. This finding was contrary to the letter dated 18 March 2014 from Churchill which indicated that the appellant had passed a number of subjects which Churchill called "units". The letter stated that the grades were provisional as they were awaiting approval from the awarding body ATHE. The grades were final and could change. We find therefore that although the appellant failed to produce a qualification certificate for the ATHE diploma, he had taken the appropriate examinations and had not failed them as erroneously held by the judge.
9. The second error was in respect of the judge's finding that she could not take into account a post application document because of the provisions of Section 85(A). Mr. Kandola submitted that this was technically an error. We find that it was a material error as Section 85A of the 2002 Act was repealed by the Immigration Act 2014 from 20 October 2014. This means that the judge could have taken into account the letter from Churchill dated 26 August 2014 which confirmed that the appellant was a student at the college, that he had successfully completed the EBMA Graduation Diploma in Business Administration, QCF level 6, course which started on 9 September 2013 and ended on 31 January 2014.
10. There were two further letters from Churchill dated 2 September 2014 and 8 May 2014. The former stated that the college had decided to transfer all AABPS level 6 students to ATHE level 6 Diploma in Management programme. The latter confirmed that the appellant was studying at the college under the previous awarding body ATHE, that the course was expected to finish on 31 January 2014; due to unforeseen circumstances the ATHE award would be delayed, so that after careful consideration Churchill had decided to assess all ATHE level 6 student's work through EBMA level 6 Graduate Diploma in Business Administration programme. We find that had the judge taken account of the letters from Churchill, they would have made a material difference to her decision.
11. We find that the errors committed by the judge are material and consequently her decision cannot stand. We remake the decision.
12. The issue before us is whether the appellant's focus had changed from his main course of study at Churchill College to the supplementary course at West Valley such that it hindered his progress in his main course of study.
13. We find that it is not the case. The appellant had studied the two courses simultaneously. He was not in breach of Section 50 of the 2009 Act.

Notice of Decision

14. The appellant's appeal is allowed.

Signed

Upper Tribunal Judge Eshun

Date: