



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/42344/2013**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 22 January 2016

**Decision & Reasons
Promulgated
On 17 March 2016**

Before

**MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE O'CONNOR**

Between

MR KHURRAM GHAFFAR

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not represented

For the Respondent: Mr S Walker, Senior Presenting Officer

NOTICE OF ABANDONMENT

1. The appellant is a national of Pakistan, born 20 September 1986. On 31 August 2013, at a time when he had extant leave to remain, the appellant made an application for further leave to remain as a Tier 4 (General) Student Migrant. The respondent refused that application, in a decision of 4 October 2013, on the basis that the relevant English language requirements of Appendix A to the Immigration Rules had not been satisfied.
2. In order to attract the necessary award of points for a Confirmation of Acceptance for Studies (CAS), a Tier 4 (General) Student Migrant is, pursuant to paragraph 118 of Appendix A to the Rules, required to demonstrate competence in the English language to a specified standard.

The Rules identify a number of alternative mechanisms by which an applicant can meet this requirement, including the following:

“118. No points will be awarded for a Confirmation of Acceptance for Studies unless:

...

(b) One of the requirements in (i), (ii), (iii) below is met:

(i) ...

(ii) the course is a degree level study and the Confirmation of Acceptance for Studies has been assigned by a sponsor which is not a recognised body or is not a body in receipt of funding as a higher education institution from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Counsel for Wales, or the Scottish Funding Council, and:

(1) ...

(2) [the Applicant] has obtained an academic qualification (not a professional or vocational qualification) which is deemed by UK NARIC to meet or exceed the recognised standards of a Bachelor's or Master's degree or a PhD in the UK, from an educational establishment in one of the following countries: Antigua and Barbuda; Australia; the Bahamas; Barbados; Belize; Dominica; Granada; Guyana; Ireland; Jamaica; New Zealand; St Kitts and Nevis; St Lucia; St Vincent and the Grenadines; Trinidad and Tobago; the UK; the USA, and provides a specified document; set out in paragraph 120-SD(a) ...” (emphasis added)

3. It has been the appellant's case throughout that by reason of having obtained an Edexcel level 7 qualification, which he contends is equivalent to a UK Bachelor's degree, he satisfies the requirements of paragraph 118(b)(ii)(2) of Appendix A to the Rules and is, in consequence, entitled to the award of 30 points for his CAS. The Secretary of State came to a contrary conclusion in her decision of 13 February 2012.
4. First-tier Tribunal Judge Birrell dismissed the appellant's appeal against the aforementioned decision concluding, *inter alia*, that the consequence of the appellant's failure to produce evidence that the qualification he sought to rely upon had been deemed by UK NARIC to meet or exceed the recognised standard of a Bachelor's degree was that he not meet the 'English language requirement' of the Rules. The appellant was not, therefore, entitled to the award of any points for his CAS.

5. The appellant appealed this decision to the Upper Tribunal but that appeal was dismissed by Upper Tribunal Judge Eshun in a decision of 31 March 2014.

6. Undeterred by this, the appellant pursued the matter to the Court of Appeal and on 2 June 2015 Lord Justice Underhill ordered that:

“The appellant’s application for permission to appeal and the resulting appeal (which challenges the application of paragraph 118(b)(ii)(2) of Appendix A of the Immigration Rules in the appellant’s case) be allowed by remittal to the Upper Tribunal (Immigration and Asylum Chamber), for reconsideration pursuant to Section 14 of the Tribunal, Courts and Enforcement Act ...”

7. The Statement of Reasons attached to the Order reads:

“6. The respondent has considered the appellant’s arguments, and concedes that there has been an error of law in this matter. The Upper Tribunal refused the appellant’s appeal on the basis that the appellant was unable to provide confirmation from UK NARIC that his Edexcel level 7 qualification was equivalent to a UK degree. It did so ostensibly on the basis of submissions made by the Home Office Presenting Officer.

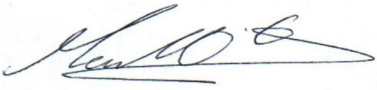
7. However, it should be noted that NARIC is not in fact mandated to provide such certificates in respect of UK qualifications: UK NARIC only deems qualifications obtained from overseas. Accordingly, para.118(b)(ii)(2) of Appendix A to the Immigration Rules, would suggest that UK NARIC is able to deem whether a UK qualification is equivalent to a bachelors degree is defective. Steps are being taken by the respondent to consider how best to address this anomaly.”

8. The matter next came before the Upper Tribunal (Knowles J and Deputy Upper Tribunal Judge Alis) on 28 July 2015, but was adjourned as a consequence of the respondent not being in a position on that date to assist the Tribunal in its consideration of what was said to be the core issue in the appeal, i.e. whether paragraph 118(b)(ii)(2) of Appendix A to the Rules is defective.

9. At the outset of the hearing before us Mr Walker indicated that although the Secretary of State was still in the process of reviewing paragraph 118(b)(ii)(2) of Appendix A, in the instant case she would withdraw her decision of 13 February 2012 and *“grant the appellant leave for an appropriate period, starting now.”*

10. As a consequence of the grant of leave to the appellant, which is said to take effect immediately, the appellant’s appeal falls to be treated as abandoned pursuant to the operation of s.104 (4A) of the Immigration, Asylum and Nationality Act 2002. There is, therefore, nothing further for the Upper Tribunal to consider.

Signed:

A handwritten signature in black ink, appearing to read 'M. O'Connor', with a long horizontal flourish extending to the right.

Upper Tribunal Judge O'Connor
Date: 25 January 2016