



IAC-FH-NL-V1

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

Appeal Numbers: IA/45535/2014
IA/45557/2014
IA/45558/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14 April 2016**

**Decision & Reasons Promulgated
On 25 April 2016**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**BASHARAT HUSSAIN
IRSHAD MUMTAZ
[E B]
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr S Mahmud, Counsel instructed by Emazon Solicitors
For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. These are appeals against the decision of Judge of the First-tier Tribunal E B Grant who, on 22 July 2015, dismissed the various appeals brought against the decisions of the respondent dated 28 October 2014 refusing the 1st Appellant's application for further leave to remain as a Tier 4

(General) Student and the remaining Appellants applications for further leave to remain as his dependents.

Relevant Background

2. The Appellants are nationals of Pakistan. The 1st Appellant's date of birth is 25 May 1977. His wife, who is the 2nd Appellant, was born on 02 August 1980. The couple have a child, who is the 3rd Appellant.
3. On 17 January 2007 the 1st Appellant was granted entry clearance to study a NQF Level 7 Post Graduate degree in Management at the London College of Management and IT. On 27 February 2009 he was granted further leave to remain as a Tier 1 (post study work) Migrant. On 05 September 2012 the 1st Appellant was granted further leave as a Tier 4 (General) Student in order to study an MBA, which was also at NQF Level 7. The 1st Appellant then made an in-time application to study an NQF Level 7 Extended Diploma in Marketing Management at Westminster Academy. The 1st Appellant attended an interview in relation to this application on 02 October 2014.
4. In reliance on answers provided by the 1st Appellant in the interview the Respondent refused the application. The Respondent was not satisfied the 1st Appellant was a genuine student because he could not give the number of modules of his chosen course, had failed to provide a satisfactory explanation as to why he was now embarking on a third NQF Level 7 course of study, and because his answers in relation to his chosen course were said to be 'notably indistinct', although no further explanation or example was provided in respect of this third criticism. The Respondent maintained that it was not clear how the 1st Appellant would benefit from undertaking a further course at the same level as his previous courses.

The decision of the First-tier Tribunal

5. The First-tier Tribunal judge made general reference to a witness statement prepared by the 1st Appellant for his appeal hearing, and to other 'evidence'. The typed Record of Proceedings indicates that the 1st Appellant was asked to adopt his statement and that he was asked (it is unclear by whom) a single question relating to his current studies. The First-tier Tribunal judge set out the core facts relating to the 1st Appellant's immigration and educational history at paragraphs 3 and 4 of her decision. The judge indicated that she had taken into account the evidence contained in the 1st Appellant's witness statement which, *inter alia*, gave more detailed information about his proposed course.
6. In paragraph 6 of her decision the judge attached little weight to the evidence contained in the witness statement "...because the Appellant has had the time to research the course." The judge did not find it credible that the 1st Appellant would undertake a third course at the same level as his previous two courses and found this did not represent

academic progress. I pause at this point to note that the Respondent did not refuse the application on the basis that the 1st Appellant was not making academic progress but because she was not satisfied that his application for further Leave To Remain as a student was genuine.

7. The judge stated, "*I find that the appellant has chosen to enrol on another level 7 course in order to remain in the United Kingdom where he works part-time for Domino's Pizza.*" Although the 1st Appellant indicated in his interview that he worked for the pizza company this did not form any part of the Respondent's reasoning. The judge concluded by agreeing with the reasons given by the Respondent in her refusal decision and found that the 1st Appellant did not genuinely intend to study in the United Kingdom.

The Grounds of Appeal and the Upper Tribunal hearing

8. The various grounds settled on behalf of the Appellants contend, in essence, that the judge attached weight to irrelevant matters (the 1st Appellant's employment), that the judge's reasoning was inadequate, contained as it was in a decision that was barely 3 pages long, and that the judge failed to engage with the explanation offered by the 1st Appellant for undertaking a third course of study at the same level as his two previous courses.
9. Mr Mahmud expanded upon these grounds in his oral submissions arguing that the First-tier Tribunal's decision was inadequately reasoned and speculative in light of the explanation offered by the 1st Appellant. It was pointed out that the 1st Appellant's interview answers did identify the actual modules he was studying. The 1st Appellant explained in his statement that his first NQF level 7 qualification was no longer recognised and that, as a result, he had to obtain another NQF level 7 qualification, which he did. I was referred to the actual explanation provided by the 1st Appellant in his interview, which he expanded upon in his statement, setting out why he now wished to undertake a third NQF level 7 qualification. The 1st Appellant had decided to commence a PhD in marketing but was advised that, as he had only studied one module in marketing in his MBA, he should study a further NQF level 7 course in marketing to give him a more in-depth knowledge as he may otherwise struggle to pursue his PhD.
10. Ms Willocks-Briscoe submitted that the First-tier Tribunal judge's decision, while brief, was legally adequate. There was no independent evidence that the description of the modules given by the 1st Appellant in his interview were the same as those he was actually studying.

Discussion

11. For the following reasons I am satisfied the First-tier Tribunal judge made a material error of law by failing to engage with the explanation given by the 1st Appellant for undertaking a third course of study at the same

level as his previous courses and by failing to support her conclusion with adequate reasons.

12. In his interview the 1st Appellant was asked (Qs 19 & 21) why he chose his new course and how it related to his previous courses of study. He explained that he had only studied a single marketing module in his MBA and that he wished to eventually undertake a PhD in marketing. He explained that, following a conversation with a college, he was informed that undertaking another NQF Level 7 course, one that specialised in marketing, would help him in his PhD as he would otherwise struggle. The 1st Appellant reiterated this explanation in his statement, indicating that a PhD in marketing could enhance his future employment prospects.
13. This explanation was not, on its face, an unreasonable one. It was not, for example, inherently implausible. It therefore required engagement by the judge. While the First-tier Tribunal judge was not obliged to find the explanation credible she could not simply ignore it given that it was one of the central reasons for the Respondent's decision. The judge however made no reference to the explanation. There was simply no attempt to engage with it. Nor did the judge make any findings in respect of the 1st Appellant's claim that his first NQF level 7 award was no longer recognised.
14. It cannot be said that this failure was incapable of making a material difference to the judge's ultimate conclusion. Whilst the First-tier Tribunal judge was entitled to attach little weight to the further information provided by the 1st Appellant in his statement relating to his studies, it remains the case that the 1st Appellant did give details of the modules he was studying in his interview (Q 20). The 1st Appellant was also able to give a number of other details of his college and his studies (Qs 23 to 26).
15. In these circumstances it is appropriate for the appeal to be remitted back to the First-tier Tribunal, before a judge other than Judge E B Grant, to be decided afresh, all issues open.

Notice of Decision

The First-tier Tribunal made a material error of law. The appeals are allowed to the extent that they are remitted to the First-tier Tribunal for a complete rehearing.



21 April 2016

Signed

Date

Upper Tribunal Judge Blum