Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/24510/2013

THE IMMIGRATION ACTS

Heard at : Field House
On : 18 February 2014

Determination Promulgated
On : 24 February 2014

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

AGA MEHER TAHREEN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Kaderi of MQ Hassan Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of India, born on 22 September 1976. She has been given permission to appeal against the determination of First-tier Tribunal Judge Greasley, dismissing her appeal against the respondent's decision to refuse her application for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant.

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2. The appellant entered the United Kingdom on 6 July 2007 with entry clearance conferring leave to enter as a student, valid until 31 October 2008. She was subsequently granted further periods of leave to remain as a student and a Tier 4 (General) Student Migrant until 14 April 2013.

3. On 13 April 2013 the appellant applied for further leave to remain as a Tier 4 (General) Student Migrant under the Points Based System. Her application was refused on 31 May 2013 on the grounds that she was not able to satisfy the requirements of paragraph 245ZX(ha) of the immigration rules. She had previously been granted leave to remain to study a BSc in Management at City College of London from 25 September 2008 until 30 September 2009 and ACCA at London School of Business and Finance from 18 January 2010 until 14 December 2012. Her current application was to study a Diploma in Strategic Direction and Leadership at the British Institute of Technology & E-commerce from 12 April 2013 to 27 February 2015. Accordingly a grant of leave to follow the proposed course of study would lead to her having spent more than five years undertaking studies at degree level or above, contrary to the provisions of paragraph 245ZX(ha).

4. The appellant appealed against that decision and her appeal was heard on 20 November 2013 by First-tier Tribunal Judge Greasley. The appellant claimed before the judge that the respondent was wrong to have included the period from 25 September 2008 because the college had closed down and she had commenced an Advanced Diploma in Business Management at Business College of London from January 2009 (although the course began in October 2008) to October 2009 which was below degree level. Her evidence was, further, that she had then applied to study ACCA at the London School of Business and Finance and had completed some parts before commencing an MBA, of which she completed Part 1 in November 2012 and had only to submit a dissertation in order to complete the course. She had completed one semester of her current course. The appellant did not believe that the ACCA course should have been included in the five year period because it was not a comparable UK degree course but was a professional qualification and also because she had commenced it under the old rules.

5. The judge found that the one year of study for the BSc before the college closed down was at degree level; that the period of study at the Business College of London from October 2008 or January 2009 up until October 2009 was at degree level; that the ACCA course was equivalent to a degree-level course; and that there had been a further two years of studies for the MBA from the beginning of 2012 until the present time, which amounted in total to over five years at degree level. He accordingly dismissed the appeal under the immigration rules. With regard to Article 8 and private life, he considered that the appellant had a history of starting courses and not completing them and that she was seeking to enrol on courses and start courses simply for the purposes of remaining in the United Kingdom. He considered that any interference with her private life would not be disproportionate or in breach of Article 8 and he accordingly also dismissed the appeal on human rights grounds.

6. Permission to appeal that decision was sought on behalf of the appellant on the grounds that the judge had erred by including in the five year period the studies

undertaken during the year before the college closed down, the advanced diploma at Business College of London and the ACCA, with reference made to the decision in Mirza (ACCA Fundamental level qualification -- not a recognised degree) Pakistan [2013] UKUT 41. Further, the judge had failed to consider that the appellant was currently studying towards a level 8 Diploma in Strategic Direction and Leadership which was a level 8 qualification leading to a doctorate level programme. He had also failed to consider Article 8.

7. Permission to appeal was initially refused on 18 December 2013, but was subsequently granted on 13 January 2014 in a renewed application, on the grounds that it was arguable that the Advanced Diploma was not at "degree level".

Appeal hearing and submissions

8. At the hearing I heard submissions on the error of law.

9. Mr Kaderi submitted that the period of time spent by the appellant on the BSc course should not have been counted by the judge because she had not been able to complete it due to the college closing down, which was not her fault. She had instead obtained a Diploma at a level below degree level. The Advanced Diploma was not degree level study, but was at NVQ level 5. The judge had wrongly counted periods of vacation time and accordingly the time spent studying for the ACCA was in effect one year and not two. In any event, following the findings in Mirza, the ACCA was not a recognised degree level course. Further, the course for which she had applied for leave was a level 8 course leading to a PhD and should not have been counted as part of the five years but brought the appellant into the exception at paragraph 245ZX(ha)(ii). The judge had also erred by failing to consider the guidance in CDS (PBS: "available": Article 8) Brazil [2010] UKUT 00315 (IAC) in relation to the appellant's Article 8 claim.

10. Mr Bramble submitted that even if the judge had erred in finding that the Advanced Diploma constituted degree level studies, that was not a material error since the appellant's current course of studies would in any event lead her to exceeding the maximum of five years of degree level study. The ACCA course was degree level. Accordingly there was the one year BSc course of study before the college closed down, the two years of the ACCA course and the year of the MBA course as stated by the judge at paragraph 12 of his determination, making a total of four years. The current course was almost two years and therefore would take the appellant beyond the five year limit. With regard to Article 8, the judge's findings were adequately made. In any event, the appellant could not succeed on Article 8 grounds in the light of the recent Supreme Court judgment in Patel & Ors v Secretary of State for the Home Department [2013] UKSC 72.

11. In response, Mr Kaderi reiterated the submissions made earlier.

Consideration and findings

12. It is relevant at this point to set out the provisions of paragraph 245ZX(ha) as follows:

> "To qualify for leave to remain as a Tier 4 (General) Student under this rule, an applicant must meet the requirements listed below. If the applicant meets these requirements, leave to remain will be granted. If the applicant does not meet these requirements, the applicant will be refused.
>
> **Requirements:**
>
> ….
>
> (ha) If the course is at degree level or above, the grant of leave to remain the applicant is seeking must not lead to the applicant having spent more than 5 years in the UK as a Tier 4 (General) Migrant, or as a Student, studying courses at degree level or above unless:
>
> (i) the applicant has successfully completed a course at degree level in the UK of a minimum duration of 4 academic years, and will follow a course of study at Master's degree level sponsored by a Sponsor that is a Recognised Body or a body in receipt of public 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 Council for Wales or the Scottish Funding Council, and the grant of leave to remain must not lead to the applicant having spent more than 6 years in the UK as a Tier 4 (General) Migrant, or as a Student, studying courses at degree level or above; or
>
> (ii) the grant of leave to remain is to follow a course leading to the award of a PhD and the applicant is sponsored by a Sponsor that is a Recognised Body or a body in receipt of public 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 Council for Wales or the Scottish Funding Council; or.."

13. The respondent's case is that the courses of study undertaken by the appellant were such that a grant of leave to undertake and complete her current course would take her above the maximum five years of degree level study. Judge Greasley reached the same conclusion for the reasons set out at paragraphs 16 and 17 of his determination. The chronology of the appellant's studies set out at paragraphs 11, 12 and 17 of the decision has not been disputed, but what is challenged is the level of study the judge attributed to some of the courses of study undertaken.

14. It is submitted on behalf of the appellant that the one year course of study undertaken at City College of London between September 2007 and September 2008, although commenced as a BSc course, resulted in the award of a lesser qualification of a Diploma in Management, at level NVQ 5, below degree level, owing to the closure of the college. Judge Greasley, however, found that it constituted degree level studies, since the course was a BSc course. In granting permission to appeal to the Upper Tribunal, Upper Tribunal Judge Grubb was clear in his view that the judge had properly concluded that the period was at "degree level" and he did not consider that there was an arguable error in that respect. I would agree with that view and consider that Judge Greasley was entitled, given

that the course undertaken was a BSc course, to conclude that that period of time constituted "degree level studies".

15. Likewise, UTJ Grubb considered that the judge had properly concluded that the ACCA studies were at "degree level". Indeed, at paragraph 16 the judge gave detailed reasons why the decision in Mirza did not support the appellant's claim and it is the case, as he found, that that case concerned a different issue, namely whether the ACCA was a "UK recognised degree". Mr Kaderi sought to argue further that the period of studies for the ACCA ought to have been considered as one year rather than two, having regard to the actual time attending tutorials. However I find no merit in that submission. I note the appellant's own grounds of appeal which state, at paragraph 8, that "during complete years of 2010 and 2011 the appellant was studying ACCA from the tuition provider London School of Business and Finance". Indeed the grounds do not challenge the judge's findings that the appellant studied the ACCA for two years between January 2010 and the end of 2011, but only raise a challenge with respect to the level of the course.

16. It was on the basis of the judge's findings in regard to the appellant's Advanced Diploma that UTJ Grubb granted permission to appeal. The reason given by the judge, at paragraph 16, for concluding that the course was at degree level was that there was no evidence to indicate otherwise. It does appear that that was the case, although evidence has since been adduced to suggest that the course was at NVQ level 5. However, even if the judge had been in error in that respect, I find merit in Mr Bramble's submission that that was not material given that even excluding that period of studies, the grant of leave to the appellant would still have taken her over the maximum five year period of degree level studies. The total period of degree level studies consists of the one year of BSc studies at City College London from September 2007 until September 2008, two years of study on the ACCA course at London School of Business and Finance from January 2010 until the end of 2011 and one year of studies for the MBA for the duration of 2012, making a total of four years. The appellant's application for leave was to undertake a level 8 Diploma in Strategic Direction and Leadership from April 2013 to 27 February 2015, a period of nearly two years of studies above degree level, which would take her beyond the five-year limit.

17. Mr Kaderi submitted in the alternative that the appellant fell within the caveat at paragraph 245ZX(ha)(ii) since the grant of leave to remain was to follow a course leading to the award of a PhD. The basis for that argument was that the Diploma course at QCF level 11 was equivalent to the academic level of a Doctorate. However, it seems to me that that argument fails on the same basis as did the arguments made in regard to the status of the ACCA course in Mirza, as endorsed in Syed, R (on the application of) v Secretary of State for the Home Department [2013] EWHC 984. The rule is specific in its reference to a PhD and does not permit for any wider interpretation such as to include equivalent courses. Furthermore, the terms in which the submission is expressed in the grounds before the First-tier Tribunal at paragraph 4 of the skeleton argument indicates a concession that the sponsor was not a " Recognised Body" as required by the rules.

18. In the circumstances it seems to me that Judge Greasley was entitled to conclude that the appellant was unable to meet the requirements of paragraph 245ZX(ha) and to dismiss the appeal on that basis.

19. As regards his findings on Article 8, the judge plainly gave full consideration to the submissions made on behalf of the appellant and took account of the guidance in CDS. At paragraphs 19 to 21 he gave clear and cogent reasons for concluding that any interference to the appellant's private life would not be disproportionate or in breach of Article 8. He was entitled to reach the conclusion that he did and the grounds of appeal are little more than a disagreement with his decision. As Mr Bramble submitted, such a decision was in any event entirely consistent with the Supreme Court's view in Patel (in particular paragraph 57 of the judgment). Accordingly, I find no error in his findings on Article 8.

DECISION

20. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed

Upper Tribunal Judge Kebede Dated: