



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)**

APPEAL NUMBER: IA/05949/2014

THE IMMIGRATION ACTS

**Heard at: Field House
On: 13 January 2015**

**Decisions and Reasons Promulgated
On: 23 January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

**MS HARVINDER KAUR
NO ANONYMITY DIRECTION MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr S Khan, counsel (instructed by Louis Kennedy Solicitors)

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

- 1.** The appellant is a national of Bangladesh, born on 5 September 1975. She appealed against the decision of the respondent dated 16 January 2014 refusing her application for further leave to remain in the UK as a Tier 4 (General) student.
- 2.** The respondent contended that she had failed to meet the requirements of paragraphs 245ZX(a) as she was refused under one of the general grounds for refusal set out in paragraph, namely, paragraph 322(3) of the Immigration Rules.

3. She was last granted leave on 13 March 2012 for leave as a Tier 4 (General) Student to study with the College of Advanced Studies. She provided evidence that she had in fact studied at South Quay College from 9 April 2012 to 27 May 2013 and had thus not complied with the conditions attached to her leave and failed to meet the requirements of paragraph 322(3) of the rules. The respondent deemed her refusal to be appropriate and was not prepared to exercise discretion in her favour.
4. The appeal was determined on the papers by First-tier Tribunal Judge Lester on 23 September 2014. She dismissed the appeal in a decision promulgated on 9 October 2014.
5. She set out the requirements under paragraph 245ZY(c) in full. Leave to remain will be granted subject to specified conditions. One of those conditions, set out in (iv), provides “no study except: 1. Study at the institution that the CAS checking service records as the migrant's sponsor; or.....3. Supplementary study.”
6. The Judge noted that the rules do permit supplementary study. The evidence in the respondent's bundle only included an offer letter from the College of Advanced Studies dated 6 March 2012 but no evidence to show that the appellant studied there or received a diploma. Evidence of study and the diploma that was produced was in fact from South Quay College and appears to have consisted of a full time course ending 27 May 2013 “leaving little time for any additional full time course study during the same period.”
7. The Judge noted that although the appellant's solicitors requested a decision on the papers they provided no additional evidence by way of a statement prepared by the appellant or by way of letters from her places of study to support the appeal and to give an explanation.
8. In the event, Judge Lester found that the appellant had not demonstrated that she studied at the College of Advanced Studies in accordance with the conditions of her grant. Refusal of leave under paragraph 322(3) although not mandatory, was subject to the secretary of state's discretion. However, the appellant had not provided any basis upon which to exercise the discretion in her favour.
9. On 23 November 2014, First-tier Tribunal Judge Brunnen granted the appellant permission to appeal. He stated that the appellant accepted that she studied at South Quay College but contended that this was “supplemental to her studies at College of Advanced Studies” and was thus permitted.
10. The grounds in support of her application to appeal asserted that on 29 September 2014 (the day when the appeal was listed), the appellant sent to the Tribunal a faxed letter from South Quay College stating that her studies there were “.....extra studies parallel to College of Advanced Studies.” A fax transmission report dated 10.59 on 23 September 2014 was produced. It appears however that no such letter was placed before the Judge when she made her decision.
11. In granting permission, Judge Brunnen stated that it was arguable that the fact that the letter was not considered constitutes a procedural error causing unfairness. He noted that the letter provides “only weak evidence” that the appellant studied at the College of Advanced Studies or that any studies there could properly be considered

to be “supplementary to her studies at South Quay College.” However, it was not “inconceivable” that it would not have led the Judge to a different decision.

12. At the hearing on 13 January 2015, Mr Khan referred to the letter from South Quay College dated 10 October 2013. That is the letter that was produced on the morning of the hearing before the First-tier Tribunal.
13. The letter states that it is a “completion letter” in respect of the appellant. It confirms that she completed her course at South Quay College. The course was for a Diploma in Strategic Management at Level 7. The course commencement was on 9 April 2012. The completion was 13 months later, namely on 27 May 2013. The total study hours were 18 per week. It is accordingly accepted that this was a full time course.
14. The letter states in the final paragraph that the appellant was doing an extra study parallel to the College of Advanced Studies. “We have not issued any CAS letter on the name of Harvinder Kaur (sic)”.
15. Mr Khan properly drew my attention to the letter from the College of Advanced Studies dated 6 March 2012 where the appellant was offered a place on the course. The course was exactly the same as that provided by South Quay College, namely for a Level 7 Diploma in Strategic Management. The course at the College of Advanced Studies was to commence on 19 March 2012 and was a one year course. The mode of study was stated to be “full time”.
16. After completion of her course at South Quay College, the appellant applied in July 2013 to study for an extended diploma in Information Technology at the European College for Higher Education, London. It was from the information included with that application that the respondent noted that the appellant had previously studied at South Quay College, where she obtained the diploma.
17. Mr Khan submitted that the First-tier Tribunal should have had the opportunity of considering the letter from South Quay. That is particularly so because it stated that the appellant was doing 'an extra study parallel to the College of Advanced Studies'.
18. Mr Khan accepted however that she attended a full time course at South Quay College which was the exact same course for the exact same period offered to her originally by the College of Advanced Studies.
19. On behalf of the respondent, Mr Bramble referred to the Upper Tribunal decision in Bhimani (Student: Switching institutions: Requirements) [2014] UKUT 00516 (IAC). The Tribunal found that where a student chooses to study at another institution holding a different sponsor licence number from that of the institution where he/she was granted leave to remain to study, he/she is required to make a fresh application for leave to remain.
20. He submitted that even if there was an error of law - in that the First-tier Tribunal Judge did not have regard to the letter from South Quay - there was nothing in the documents in any event that revealed that the course was supplemental. There had accordingly been a change of college in breach of the conditions.

21. Judge Lester did have regard to the fact that the refusal was not mandatory but subject to the respondent's discretion. However, the appellant had not provided any basis upon which to exercise that discretion in her favour. He further submitted that discretion was in fact exercised in this case.

Assessment

22. Although Mr Khan submitted that the course at South Quay College was merely "supplemental" to that at the College of Advanced Studies, it is quite clear that the appellant was awarded a Diploma in Strategic Management following a year's full time course at South Quay College. That was the exact same course which she wished to take at the College of Advanced Studies.
23. The letter from South Quay College also states that the appellant was doing "an extra studies parallel to the College of Advanced Studies". However, there were no extra studies parallel to the College of Advanced Studies. This was for the exact same full time course that was offered by the College of Advanced Studies. Nor was any evidence provided that the appellant did any studies at the College of Advanced Studies.
24. I accordingly find that the only evidence of study was for the full time course ending on 27 May 2013 that the appellant received from South Quay College.
25. The respondent did consider exercising discretion but deemed the refusal appropriate and was not prepared to exercise discretion in the appellant's favour.
26. There is no ground of appeal relied on by the appellant before the Upper Tribunal relating to the exercise of discretion. No submissions were addressed by Mr Khan relating to the discretion. Nor was there any evidence advanced to demonstrate that in the circumstances, discretion should have been exercised in the appellant's favour.
27. Having regard to the circumstances as a whole, I find that the decision of the First-tier Tribunal did not involve the making of a material error of law and shall stand.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed
Deputy Upper Tribunal Judge Mailer

Date 2/1/2015