



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

Appeal Number: IA/30169/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 18 March 2015**

**Determination Promulgated
On 30 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

**JALAL AHMAD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: unrepresented

For the Respondent: Mr M Shilliday Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge

Scobbie promulgated on 18 November 2014 which allowed the Appellant's appeal under the Immigration Rules.

Background

3. The Appellant was born on 10 February 1991 and is a national of Afghanistan.
4. On 25 June 2014 the Appellant applied for leave to remain as a Tier 4 Student Migrant under the Points Based System and for a Biometric Residence Permit.
5. On 9 July 2014 the Secretary of State refused the Appellant's application and made directions for his removal under section 47 of the Immigration, Asylum and Nationality Act 2006. The refusal was by reference to paragraph 245 ZX(h) of the Immigration Rules which provides that if the proposed course of study is below degree level the grant of leave to remain must not lead to the applicant having spent more than 3 years in the United Kingdom as a Tier 4 student. The refusal stated that the Appellant had previously been granted leave to study below degree level for a period of 1 year and 10 days and as his proposed course was 1 year 11 months and 29 days in duration this would take him above 3 years of study below degree level.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Scobbie ("the Judge") allowed the appeal against the Respondent's decision. The Judge found :
 - (a) He considered a letter dated 22 July 2014 from Bradford Regional College in which they confirmed that the finishing date in the CAS was incorrect and should have read 7 June 2016 not 6 July 2016.
 - (b) He found that he was entitled to take the letter into account by reference to Section 85A(4) (d) of the Nationality, Immigration and Asylum Act 2002.
 - (c) Therefore the total period of study was less than three years.
7. Grounds of appeal were lodged on the basis that on the dates as set out in the Judges decision the period of study was still over 3 years and on 7 January 2015 First-tier Tribunal Judge Frankish gave permission to appeal.

Discussion

8. Mr Shilliday indicated that he had not seen a copy of the letter referred to in paragraph 12 of the decision but based on the dates in paragraph 12 of the decision, 7 June 2014- 7 June 2016 the period of study was exactly two years and therefore the total period of study was in excess of the three years allowed by the Rule.
9. I indicated that in writing the decision the Judge had apparently made a typographical error in that although he relied on the letter from Bradford College the start date given in the letter was 7 **July** 2016 (not 7 June) and the finish date was 6 June 2016. That

was a period of 700 days which is 1 year 10 months and 30 days. I retired to allow Mr Shilliday an opportunity to consider the letter and calculate the period in issue.

10. Mr Shilliday provided me with a printout from timeanddate.com which confirmed the period as set out above.. He did not seek to make any further submissions

Finding on Material Error

11. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
12. This was an appeal against a refusal of leave to remain as a Tier 4 student that was refused because the proposed period of study based on the CAS that the Appellant provided with the application would have resulted in a total period of study at undergraduate level in excess of 3 years which is not permitted by the Rules. The Appellant it was agreed had previously been granted leave to study for a period of 1 Year and 10 days.
13. The Judge who dealt with this case on the papers had before him a letter dated 22 July 2014 which he was prepared to consider from the sponsoring college, Bradford Regional College, which the Respondent had not seen which confirmed that there had been an error in the original CAS and that the start date for the Appellant's course was 7 July 2014 and the finish date was 6 June 2016. This was therefore a period of 700 days and would have meant that the aggregate period of study was below three years.
14. In writing his decision the Judge made an error in the decision at paragraph 12 and gave the dates of study as 7 June 2014 and finish date as 7 July 2016 and it was on the basis of those dates, not having seen the letter from the College, that the Respondent challenged the decision.
15. Therefore while the Judge made a factual error, had he recorded the dates correctly he would have been entitled to reach the conclusion that he did which was that the total period of study was less than three years.

CONCLUSION

16. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

17. **The appeal is dismissed.**

Signed

Date 18.3.2015

Deputy Upper Tribunal Judge Birrell