



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

Appeal Number: IA/24973/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 19 July 2017**

**Decision & Reasons
Promulgated
On 19 September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

**HABIBUR RAHMAN ANSARY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K. Mustafa, of Counsel, instructed by Kalam Solicitors
For the Respondent: Mr P. Singh, Home Office Presenting Officer

DECISION ON ERROR OF LAW

Background

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Moran (hereafter "the FtTJ") dismissing his appeal against the Respondent's decision to refuse him leave to remain under the Immigration Rules ("the Rules") as a Tier 4 (General) Migrant.
2. The Appellant is a national of Bangladesh. He has remained in the United Kingdom (UK) since his entry in 2006 as a student. His last period of leave expired on 4 June 2013. On 31 May 2013, he lodged a further application for leave to remain as a student; that application was refused on 10 July 2013. The sole ground of refusal was that a grant of leave would exceed

the limit of five years for students and that none of the exceptions applied. The Appellant appealed.

3. Before the FtTJ the Appellant was represented but the Respondent was not. While the original grounds of appeal argued that the proposed course of study would not exceed the five-year limit, by the time the appeal was heard on 21 November 2016, the Appellant had resided in the UK for a period of ten years. He thus pursued his appeal on the sole ground that he met the requirements of paragraph 276B of the Rules.

The Decision of the FtTJ

4. The FtTJ dismissed the appeal on all grounds. In his self-direction, the FtTJ said this at [7]: *“Given the dates involved this is an appeal where all of the ‘old’ appeal rights are available.”* The FtTJ then noted the sole basis of appeal pursued by the Appellant, but found that as it was not raised by the Appellant until 4 November 2016, he could not consider it as the *“respondent had not consented to this additional ground being added as is required by section 85(5) of the Nationality, Immigration and Asylum Act 2002”* [8]. The FtTJ thus determined and dismissed the appeal on the basis of the original decision and grounds, observing that it was for the Appellant to make a fresh application under paragraph 276B of the Rules.
5. The Appellant sought permission to appeal. Permission to appeal was granted by Designated First-tier Tribunal Judge Murray on 8 June 2017 on all grounds.

Error of Law

6. This decision is brief due to the concession rightly made by Mr Singh on behalf of the Respondent at the hearing, that the FtTJ materially erred in law. There is no dispute between the parties that this appeal is governed by the regime in place prior to the amendments made to the 2002 Act by the Immigration Act 2014 (Commencement No.4, Transitional and Savings Provisions and Amendment) Order 2015; hence section 85(5) of the 2002 Act was of no application. The FtTJ thus plainly erred in law in concluding that he had no jurisdiction to consider the appeal under paragraph 276B of the Rules. Therefore, the decision must be set aside.
7. The parties did not agree on the issue of disposal. Mr Mustafa stated that I should find the Respondent’s decision is not in accordance with the law on account of her failure to consider paragraph 276B of the Rules. Mr Singh argued that that was not the appropriate course and invited me to remit the matter to the First-tier-Tribunal. I find that the proposal adopted by Mr Singh is the correct course. The original decision refusing the Appellant’s student application has not been shown to be unlawful and is not vitiated by the Appellant’s reliance on paragraph 276B of the Rules, which was inapplicable at the date of decision. The Appellant is entitled of course to raise an additional ground of appeal under the regime governing this appeal, and the First-tier Tribunal has jurisdiction to consider it and should do so. The appropriate forum in which to do so is the First-tier Tribunal.

DECISION

The decision of the First-tier Tribunal involved the making of an error on a point of law such that the decision is set aside. The appeal is remitted to the First-tier Tribunal for a rehearing to be heard by a Judge other than FtTJ T. Moran.

Signed

Dated: 4 September 2017

Deputy Upper Tribunal Judge Bagral