



**The Upper Tribunal
(Immigration and Asylum Chamber)
IA/16255/2014**

Appeal number:

THE IMMIGRATION ACTS

**Heard at Field House
On January 23, 2015**

**Determination
Promulgated
On January 30, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR ATM JAHANGIR
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Duffy (Home Office Presenting Officer)
For the Respondent: Mr Spurling, Counsel, instructed by PGA
Solicitors

LLP

DETERMINATION AND REASONS

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellant is a citizen of Bangladesh. The appellant was granted leave to enter as Tier 4 (General) student on October

17, 2009 valid until October 31, 2011. This leave was extended for him to study at West End College commencing on February 13, 2012 until February 13, 2013. The college's licence was revoked on August 1, 2012. On April 3, 2012 he commenced a supplementary course at the London Ambassador College. On July 31, 2013 he submitted an application to vary his leave as a Tier 4 (General) Student but the respondent refused this on September 18, 2013.

3. On October 9, 2013 he submitted a Tier 4 (General) Student application but this was refused by the respondent on March 17, 2014 and at the same time directions for his removal pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006 were given.
4. The appellant appealed under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on April 3, 2014 and the matter came before Judge of the First-tier Tribunal Black (hereinafter referred to as the "FtTJ") on October 21, 2014 and in a decision promulgated on October 29, 2014 she found the decision was not in accordance with the law and remitted it back to the respondent for further consideration.
5. The respondent lodged grounds of appeal on November 3, 2014. She submitted the FtTJ erred by allowing the appellant's appeal to the limited extent because the appellant was not undertaking his main course of study and the FtTJ erred by allowing the appellant's appeal to succeed.
6. Judge of the First-tier Tribunal Astle granted permission to appeal on December 9, 2014 stating there was an arguable error in law based on the grounds.
7. The appellant was in attendance in court and was represented as set out above.

ERROR OF LAW SUBMISSIONS

8. Mr Duffy relied on the grounds of appeal and submitted the appellant had undertaken two courses. He submitted his primary course was the course at West End College and when this course was stopped he no longer met the Rules because his supplementary course then became his primary course. He accepted that the grounds of appeal only succeeded if the second course was not a supplemental course and he agreed there was no definition of what a supplemental course was.
9. Mr Spurling agreed the grounds could only succeed if the second course was not a supplemental course and he submitted the FtTJ had considered the evidence, in the absence of an appearance by the respondent at the original hearing, and decided that the decision was unlawful as the respondent had not properly considered all the facts of the case and in

particular whether the second course was a supplemental course. There was no requirement for the second course to be carried out at the same time as the first course and there was no merit to the grounds of appeal.

10. This appeal was the second bite of the cherry. Original refusal letter says he was in breach by starting this course but that was not what was being advanced today. The timeline shows he was not in breach as claimed in the refusal letter because when he began the second course he was studying at West End College in accordance with his permission.

ERROR OF LAW ASSESSMENT

11. The FtTJ concluded at paragraph [8] of her determination that the respondent did not consider the issue of whether the studies undertaken were supplementary. The refusal letter referred to the fact he commenced a course at West End College on February 13, 2012 and in April 2012 he commenced a supplementary course at London Ambassador College. His original sponsor did not lose its licence until August 2012 at which time the respondent curtailed his leave and gave him 60 days to find a new sponsor. He chose at that time to issue a Tier One application and this extended his leave under Section 3C.
12. It seems clear from the refusal letter the respondent decided that he had to make a fresh application to study at London Ambassador College and had no regard that this may be covered by paragraph 245W(c)(iv) HC 395.
13. I am satisfied the decision taken by the FtTJ was a sensible and correct approach. As Mr Duffy properly concedes there is no definition of what a supplemental course is and this was something the respondent has not considered.
14. I therefore uphold the FtTJ's decision and dismiss the appeal.

Decision

15. The decision of the First-tier Tribunal did not disclose an error in law.
16. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) an appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. An order was made in the First-tier and I see no reason to amend that order.



Signed:

Dated:

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT



I uphold the original decision.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis