



IAC-FH-AR-V3

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

Appeal Number: IA/28403/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 4th January, 2016
Given extempore**

**Decision & Reasons Promulgated
On 5th February, 2016**

Before

Upper Tribunal Judge Chalkley

Between

**KIET NHI LUU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Adophy, Saintta International Lawyers UK

For the Respondent: Mr D Clark, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Vietnam and she was born on 27th December, 1986.

Immigration History

2. The appellant arrived in the United Kingdom on 12th May, 2006 and was in possession of a visa conferring leave on her to enter the United Kingdom until 31st October, 2006 as a student. It was subject to a condition restricting employment and recourse to public funds. She was

subsequently granted further leave to remain from 19th October, 2006 until 30th June, 2010 as a student, again restricting employment and recourse to public funds. During the period June 2007 until February 2008 the appellant studied a Degree Foundation Programme at NQF level 3 and from February 2008 until February 2010 she studied an Advanced Diploma in Business Studies at NQF study level 4 and 5.

3. The appellant was subsequently granted a further grant of leave to remain from 16th June, 2010 until 28th February, 2011, during which time she undertook the final year of a degree course at study level 6. Between February 2011 and February 2013 the appellant was granted leave as a Post-Study worker and was granted a third extension of leave as a student from 8th April, 2013 until 28th June, 2014 when she undertook an MBA degree programme at study level 7.
4. On 23rd June, 2014 the appellant made application for leave to remain in the United Kingdom as a Tier 4 Student Migrant. Her application was refused by the respondent on 8th July, 2014 as a result of which the appellant appealed to the First-tier Tribunal.

Decision of First-tier Tribunal

5. First-tier Tribunal Judge Jones recorded the evidence given by the appellant. He noted that the appellant studied English and a Foundation course, initially and then undertook a BA (Hons) Business Studies Programme at London School of Commerce. She was granted a period of post-study work leave between February 2011 and February 2013, and then undertook an MBA course between February 2013 and February 2014.
6. The respondent refused the appellant's application of 23rd June 2014, because the appellant had previously been granted leave to study a BA (Hons) Business Studies Programme for four years four months and twenty four days and was granted further leave to study a Masters in Business Administration degree, at School of Business and Law, for one year sixteen days. Her current application was to study a Masters in International Management at London School of Commerce for one year twenty-nine days.
7. Having completed a course at degree level in the UK of a minimum duration of four years, the respondent noted that the applicant was now applying to study a course at Master's degree level and, therefore, the total duration of the appellant's study at degree level and above would be more than six years. The application was refused under paragraph 245ZX(ha), which makes it clear that grants of entry or leave to remain for Tier 4 applicants to undertake studies at degree level or above are limited to a maximum period of five years save for certain exceptions such as medical students and students who took a four year degree course. They are set out in the rules and do not apply here.

8. Before the First-tier Tribunal Judge, the appellant argued that the respondent had incorrectly included her post-study work between February 2011 and February 2013 when calculating the length of the appellant's degree study. The appellant argued that this period of work should not be counted against her in the calculation under Paragraph 245ZX(ha). There was no Presenting Officer before the First-tier Tribunal Judge who, while having found the appellant to be credible, found that there was insufficient evidence as to the appellant's claim that her leave had been granted as a post-study migrant. He dismissed the appeal.
9. At the hearing before me Mr Clark confirmed that the grant of leave for the purpose of work, between January 2011 and February 2014, did not count in the calculation for the purposes of paragraph 245ZX(ha) and should not, therefore, have been included in the calculation of the study period. He accepted that this was a material error of law, so that the judge's determination should be set aside and remade by me.
10. However, Mr Clark suggested, the decision of the respondent taken on 8th July, 2014 to refuse to grant the appellant further leave to remain as a Tier 4 (General) Student Migrant was correct. He told me that the relevant grants of leave for calculating the five year period are:-
 - the leave which was granted on 19th October, 2006 until June 2010; and
 - the leave between 16th June, 2010 and 28th February, 2011.
11. Mr Adophy suggested that the periods of study undertaken by the appellant at level 3 and 4 could not possibly be at degree level because, completion of the individual courses did not lead to a degree and were self-contained courses in themselves. There was no requirement, he suggested, for the appellant to go on and complete a degree and the courses were properly described as being at NQF level 3 and level 4. I adjourned briefly to consider the submissions.

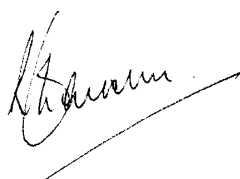
Determination

12. Periods of study for a qualification below degree level, are capable of being counted as time spent studying at degree level for the purpose of paragraph 245ZX(ha), if the period of study is taught at degree level, and when the qualification itself is added to other periods of study, resulting in the award of a degree.
13. A Degree Foundation course is one such period of study, because, when added to other degree level study it is capable of comprising part of a Bachelor's degree. An appellant might only have pursued the Degree Foundation course and then ended her studies. They would have been awarded a NQF level 3 qualification, but it would have amounted to a period of study at degree level.

14. An Advanced Diploma in Business Studies is not a degree and is at NQF level 4. However, it too is a period of study at degree level and is capable of accounting for one-third of the total credits required for a Bachelor of Arts degree. If studied alone, the period of study leads to a level 4 qualification, but it is a period of study at degree level.
15. The appellant's Degree Foundation Course, undertaken by the appellant between 3rd June, 2006 and June 2007 was a course of study leading to a Foundation level 3 *qualification*, but it was also a period of study at degree level which, counted for 120 of the 360 qualifying points which comprised her degree. Similarly, the second period of study from June 2007 to February 2008 when she undertook her Advanced Diploma is in respect of a qualification at level 4, but was a course at degree level and it also qualified for 120 credits towards the total of 360 credits required for the appellant's degree.
16. The appellant was granted a period of one year sixteen days to study a Masters in Business Administration and her current application was for a Masters degree in international management for a further period of one year twenty-nine days.
17. Despite the fact that the respondent should not have included within the calculation the period of work study leave, the respondent was correct in refusing the application, because to grant it would mean that the appellant has been studying at degree level or above for a period of more than five years.
18. The making of the previous decision involved the making of an error of law. I do not set the decision aside but order that it shall stand because the error is not material.

Notice of Decision

18. The appeal is dismissed under the Immigration Rules. No anonymity order direction was made. I make no fee award in favour of the appellant.



Upper Tribunal Judge Chalkley