

Appeal Number: IA/02974/2005

Asylum and Immigration Tribunal**THE IMMIGRATION ACTS**Heard at **Field House**
On 24 August and 3 November 2006Determination Promulgated on
- 1 DEC 2006Before
Senior Immigration Judge DrabuBetween
RAJU SHAH THAKURI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

RepresentationFor the Appellant: Mr R Clement of Counsel instructed by Ash Norton, solicitors
For the Respondent: Mr L Tarlow and Mr P Deller, Senior Home Office Presenting Officers.**DETERMINATION AND REASONS**

1. This is a reconsideration case. The appellant is a citizen of Nepal. The case has a long history which for the most part is not relevant to the proceedings before me.
2. He appeals against the respondent's decision dated 15 April 2005 refusing to vary his leave to remain to pursue his studies in the United Kingdom. The decision of the respondent is in the following terms; "You applied for leave to remain in the United Kingdom as a student in order to study Business Information Systems at the Queensland College London, but your application has been refused. Since you commenced your studies in the United Kingdom on 20 September 1999 you have only undertaken short courses below degree level and the Secretary of State is not satisfied that you would not, as a result of an extension of stay, spend more than 2 years on short courses below degree level or courses of less than 1 years duration. In view of the fact that you were granted leave to remain in the United Kingdom in order to study as a student the Secretary of State is not satisfied that you intend to leave the United Kingdom at the end of your studies."
3. At the hearing before me on 24 August 2006 Mr Tarlow for the respondent agreed with Mr Clement and bearing in mind the observations made by Mr Justice Crane in the Statutory Review of the AIT decision refusing order of reconsideration, that the determination of Mr Oscar Del Fabbro dated 17 August 2005 was in material error of

law. The parties asked that the second stage reconsideration did not require an adjournment and could be completed the same day. Unfortunately the case had to be adjourned part heard. I heard further oral submissions from Mr Clement on 3 November and on this occasion the respondent was represented by Mr Deller.

4. The material facts in this case are that the appellant is studying at Queens College London on the Business Information System programme. He started on the programme on 10 January 2005. It is a two year programme leading to conferment of Advanced Diploma and successful completion of it will enable the appellant to join the final year of a degree course in Business Information Systems at any of the universities in the United Kingdom recommended by the Association of Business Executives (ABE). The Queens College London describes the course on which the appellant has been enrolled since 10 January 2005 as a "full time degree course". The respondent does not accept the course to be a "degree course." The Association of Business Executives (ABE) of which the appellant is a member describes the programme as "Fast Track to a Degree and MBA" and in its leaflets states it to be "Bachelor's Programme".
5. I heard submissions from Mr Clement and Mr Deller and it is fair to say that there was little disagreement between them both in relation to material facts as well as permissible inferences from those facts and also the legal framework applicable to the case. Mr Clement produced evidence which establishes that upon completion of the Advanced Diploma the appellant could join the final year of degree courses in Business Information Systems at any of the long list of UK universities. He also produced satisfactory evidence to show that the appellant is progressing in his course and that he will complete the first part of the course on 15 December 2006. The evidence produced leaves no room for doubt that the appellant will qualify to join the "final year" of the degree programme course at any of the universities on the list. I note that he can join the final year of the BA (Hons) Business Management degree course run by York St John University, or the final year of the BA (Hons) degree in Business Administration at the University of Sutherland, or the final year of the BSc (Hons) in Applied Computing or BSc in Business Information Technology run by Northumbria University or the final year of the BSc Computing Degree run by the University of Greenwich to name just a few.
6. Mr Clement took me through the facts of the case and argued that the course upon which the appellant is enrolled is at the very least a degree level course. If found to be a degree level course, said Mr Clement, the appellant would not be required to establish intention to leave the country on completion of the course. He went on to say that in any event the decision of the respondent was unsustainable as on the established facts the respondent could not have refused the application for variation. The appellant was not engaged on a course that was below degree level and the duration of the course was not less than 1 year. He asked that the appeal be allowed.

7. Mr Deller said that in determining whether the course is a degree course or degree level course, perusal of the Immigration Directorates Instructions (March 2006 edition) (IDI) would be useful. He drew attention to Paragraph 3.19 and to Paragraph 3.19.1 and Paragraph 3.19.2.
8. Having heard Mr Clement and Mr Deller I am satisfied that the decision of the respondent was not in accordance with the Law and the Rules. The decision is based on Paragraph 60 (vi) of HC395. However as Mr Clement pointed out (and Mr Deller did not disagree) the course upon which the appellant was enrolled and was seeking variation of leave to remain for was not below degree level and also its duration was not less than 1 year. The respondent's assertion that he could not be satisfied that it was the appellant's intention to leave the United Kingdom was based on a fundamentally false proposition giving rise to the erroneous application of the rule relating to short under degree level courses. Mr Clement said that there was positive evidence from the appellant that he intends to leave the United Kingdom when his studies are complete. Acceptance of his positive intention to leave had been the basis upon which the respondent had been granting him leave to remain since his first arrival in 1999.
9. I also find that the course for which the appellant sought variation of leave to remain is a degree level course. I was led to this conclusion by reading carefully the terms of Paragraphs 3.19.1 and 3.19.2 of the IDI which Mr Deller very helpfully drew my attention to. As the course is a degree level course, the appellant, with reference to Paragraph 3.20.2 of the IDI, does not have to meet the requirement on intention to leave the United Kingdom upon completion of his studies. For the sake of completeness though I should like to record that I am satisfied that the appellant intends to leave the United Kingdom on completion of his studies.

DECISION:

There was a material error of law in the determination of Mr Oscar Del Fabbro, Adjudicator.

I substitute that decision by allowing the appeal of the appellant against the respondent's decision to refuse him variation of leave to remain. The respondent's decision was not in accordance with the law and the Rules.


Senior Immigration Judge Drabu

Date:

6/11/06