Upper Tribunal
(Immigration and Asylum Chamber)

Kamran (UK NARIC – incorporation in rules) [2012] UKUT 00058(IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
on 8 November 2011	.....

Before

LORD BANNATYNE

UPPER TRIBUNAL JUDGE SPENCER

Between

MALIK SOHAIL KAMRAN

SAMINA GUL

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the appellants: Mr N Mohammad, Counsel, instructed by Legis Chambers

For the respondent: Mr P Deller, Senior Home Office Presenting Officer

It cannot be said that UK NARIC has no role in judging the equivalence of a Tier 1 (General) Migrant applicant's qualification if it is not a foreign qualification since paragraph 5 of Appendix A to HC 395, as amended, expressly gives it that role.

DETERMINATION AND REASONS

1.
These appeals come before us as a result of permission to appeal having been granted in the Upper Tribunal by Upper Tribunal Judge Grubb on 17 th May 2011. The terms of the grant of permission provide an adequate introduction to the details of the appeals. Permission to appeal was granted for the following reasons:

"1. The first appellant appeals against the decision of the First-tier Tribunal (Immigration Judge Peart) dismissing his appeal against the refusal of the respondent to extend his leave to remain as a Tier 1

(General) Migrant under para 245C of the Immigration Rules (HC 395 as amended). The appeal of the second appellant, who is the first appellant's wife, fell to be dismissed in line under para 319C of the Rules.

2. The first appellant relied upon a postgraduate diploma in management studies issued by the Birmingham International College in order to obtain the required "Attributes" points under Appendix A and to meet the language requirement in Appendix B. The judge found that the first appellant was not entitled to the points as the qualification was not "deemed by UK NARIC to meet the recognised standard of a bachelor's degree in the UK". As the grounds point out, UK NARIC functions to assess overseas qualifications and their equivalence to UK qualifications (see UK Border Agency, Tier 1 (General) of the Points-Based System – Policy Guidance at para 64). It is arguable, therefore, that in requiring UK NARIC to approval for the first appellant's qualification, the judge imposed an impossible requirement and thereby erred in law in assessing whether the appellant met the requirements of the Immigration Rules.

3. The proper mechanism for the assessment of the equivalence of UK qualifications was raised in the grounds and may be argued. Even if an error of law is identified, it will remain for the first appellant to establish that his postgraduate diploma from a UK institution is the equivalent of a UK bachelor's degree for the purposes of the Tier 1 (General) Migrant category within the Immigration Rules.

4. Permission to appeal is granted."

2.
We received skeleton arguments from both from Mr Mohammad and Mr Deller and we have also taken into account their oral submissions. The thrust of the argument advanced on behalf of the appellants was that UK NARIC had no function other than to assess overseas qualifications and their equivalence to United Kingdom qualifications. Reliance was placed upon the UK NARIC website which said that UK NARIC was the national agency responsible for providing information and advice about how qualifications from schools from overseas compared to the UK's national qualification frameworks. Mr Mohammad suggested that the Credit Accumulation Scheme (CATS) operated by the Quality Assurance Agency for Higher Education (QAA) was the body which oversaw quality assurance for indigenous awards and there was no general requirement for British citizens to reference (sic) their British awards. It was said that with the QAA in place the respondent was not correct to insist that UK NARIC was the body of reference for indigenous qualifications. Having said that, he conceded that the QAA did not cover private institutions such as the Birmingham International College (BIC).

3.
Mr Mohammad further argued, by reference to a document taken from the Directgov website, that since the National Qualifications Framework (NQF) set out the level at which a qualification could be recognised in England, Northern Ireland and Wales across the NQF and Qualifications and Credit Framework (QCF), the Secretary of State was acting unreasonably in requiring UK NARIC to assess the equivalence of the first-named appellant's English qualification, particularly since such was not part of UK NARIC's role. It was also argued that since the first-named appellant's qualification had been deemed sufficient to entitle him to leave to remain in the United Kingdom under the International Graduates Scheme (IGS), it should be deemed to be sufficient for the purposes of his application for leave as a Tier 1 (General) Migrant.

4.
We observe that only the latter point was raised before the First-tier Tribunal judge at the hearing of the appeal. Then the appellants' representative conceded that at the date of the application and the

decision the first-named appellant was not able to show that he had obtained an academic qualification deemed by UK NARIC to meet the recognised standard of a bachelor's degree. It is clear from paragraph 9 of the determination that what was argued on the appellants' behalf was that as the first-named appellant had qualified under the International Graduate Scheme because transitional arrangements enabled such persons to apply for further leave as Tier 1 (General) Migrants to obtain a total of up to two years' leave under a combination of their previous scheme and Tier 1, the first-named appellant's Postgraduate Diploma in Management Studies should be regarded as an adequate qualification. The First-tier Tribunal judge accepted that whilst that might be true the appellants still needed to satisfy the requirements of the Immigration Rules.

5.
The reality of the position was that the first-named appellant had been granted further leave to remain in the United Kingdom as a participant of the International Graduate Scheme on 17 th July 2008 until 17 th July 2009 and then on 27 th July 2009 he was granted further leave to remain in the United Kingdom as a Tier 1 (Post-Study Work) Migrant until 17 th July 2010.

6.
We also observe that the only matter advanced in the grounds of appeal to the Upper Tribunal was that UK NARIC had no jurisdiction to adjudicate on the standards of British awards.

7.
Paragraph 245C of HC 395, as amended, in force at the date of decision required, so far as relevant, as follows:

" **Requirements for entry clearance or leave to remain**

To qualify for entry clearance or leave to remain as a Tier 1 (General) Migrant, an applicant must meet the requirements listed below. If the applicant meets these requirements, entry clearance or leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.

…

Requirements:

(aa) The grant allocation relating to the Tier 1 (General) Migrant route would not be exceeded by granting the application for entry clearance or leave to enter in the relevant grant allocation period.

…

(c) The applicant must have the specified minimum number of points under paragraphs 1 to 31 of Appendix A as set out below:

(i) if the applicant is applying for leave to remain and has, or last had, leave as a Tier 1 (General) migrant, as a Highly Skilled Migrant, as a Writer, Composer or Artist or as a Self-employed Lawyer, the specified minimum number of points is 75 points.

(ii) if the applicant does not fall within the scope of 245C(c)(i), the specified minimum number of points is 80 points.

(d) The applicant must have 10 points under paragraphs 1 to 2 of Appendix B.

(e) The applicant must have 10 points under paragraphs 1 to 3 of Appendix C.

(f) An applicant who is applying for leave to remain must have, or have last been granted, entry clearance, leave to enter or remain:

…

(xvi) as a Tier 1 (Post-Study Work) Migrant,

…”

8.
Appendix A provided, so far as is relevant, as follows:

“ Appendix A - Attributes

Attributes for Tier 1 (General) Migrants

1. An applicant applying for entry clearance or leave to remain as a Tier 1 (General) Migrant must score the specified minimum number of points for attributes as set out below:

(i) if the applicant is applying for leave to remain and has, or last had, leave as a Tier 1 (General) Migrant, as a Highly Skilled Migrant, as a Writer, Composer or Artist, or as a Self-employed Lawyer, the specified minimum number of points is 75 points.

(ii) if the applicant does not fall within the scope of Appendix A, 1(i), the specified minimum number of points is 80 points.

1A. Subject to paragraph 1B, an applicant who has a Master of Business Administration Degree from an institution listed in paragraph 58A of this Appendix, and who provides the specified documents, will be awarded 80 points, provided he:

(a) commenced the course of study that led to that degree on or before 29 June 2008.

(b) applied for entry clearance or leave to remain within 12 Months of the date on which he was first notified in writing, by the awarding institution, that the qualification had been awarded, and

(c) provides the specified documents as evidence of the facts in (a) and (b).

1B. Paragraph 1A does not apply to an applicant who is applying for leave to remain and who has, or last had, leave as Highly Skilled Migrant, Tier 1 (General) Migrant, a Writer, Composer or Artist or a Self-Employed lawyer.

2. With respect of any applicant to whom paragraph 1A does not apply, available points are shown in tables 1 to 4 below. Only one set of points will be awarded per table. For example, points will only be awarded for one qualification.

3. Notes to accompany the tables appear below each of the tables.

Table 1

…

…

Applications for entry clearance and all other applications for leave to remain

Qualification	Points
Bachelor's degree	30
Master's degree	35
PhD	45

Qualifications: notes

4. Specified documents must be provided as evidence of the qualification, unless the applicant has, or was last granted, leave as a Highly Skilled Migrant or a Tier 1 (General) Migrant and previously scored points for the same qualification in respect of which points are being claimed in this application.

5. Points will only be awarded for an academic qualification if an applicant's qualification is deemed by the National Recognition Information Centre for the United Kingdom (UK NARIC) to meet or exceed the recognised standard of a Bachelor's or Master's degree or a PhD in the UK.

6. Points will also be awarded for vocational and professional qualifications that are deemed by UK NARIC or the appropriate UK professional body to be equivalent to a Bachelor's or Master's degree or a PhD in the UK.

7. If the applicant has, or was last granted, leave as a Tier 1 (General) Migrant or a Highly Skilled Migrant and the qualification for which points are now claimed was, in the applicant's last successful application for leave or for a Highly Skilled Migrant Programme Approval Letter, assessed to be of a higher level than now indicated by UK NARIC, the higher score of points will be awarded in this application too.

…”

9.
Therefore according to the immigration rules in order for the appellants to have succeeded in the appeals the first-named appellant would have to have been entitled to 30 points in respect of the Postgraduate Diploma in Management Studies issued to him in 2007 by Birmingham International College. According to paragraph 5 of Appendix 1 points would only be awarded if this qualification was deemed by UK NARIC to meet or exceed the recognised standard of a bachelor’s degree in the United Kingdom.

10.
The point made on the appellants’ behalf before the First-tier Tribunal judge, that the first-named appellant’s qualification, which was sufficient to entitle him to leave under the International Graduates Scheme, should be regarded as adequate for the purpose of his application for leave as a Tier 1 (General) Migrant, was and is in our view wholly unarguable in the light of the decision of the House of Lords in Odelola v Secretary of State for the Home Department [2009] UKHL 25. In that appeal the House of Lords held that in the absence of transitional provisions and an indication to the contrary, even if the rules changed between the date of an application and the date of the decision, an appellant still needed to comply with the immigration rules as they were at the date of the decision.

11.

Had we had to decide the main argument now advanced on behalf of the appellant, namely that UK NARIC had no role in judging the equivalence of the appellant's qualification because it was not a foreign qualification, unaided by authority we would have had no hesitation in rejecting it. If it were the case that UK NARIC had no such role then all that would have followed would have been that on a proper construction of the immigration rules no mechanism would have been in place for judging the equivalence of the appellant's qualification. In that situation as he did not have a UK bachelor's degree he could not have satisfied the requirements of the immigration rules.

12.
As it is, the point has already been decided in the Court of Appeal by Richards LJ in a renewed application for permission to appeal in AH (Pakistan) v Secretary of State for the Home Department [2010] EWCA Civ 1564. The same point was unsuccessfully argued before Senior Immigration Judge Southern in the reconsideration of an appeal before the AIT, in a determination promulgated on 8 th February 2010, dismissing the appellant's appeal against the respondent's refusal of his application for a variation of his leave to remain. The unsuccessful appellant applied to the Court of Appeal for permission to appeal but his application was refused. Richards LJ recited that the appellant's contention before the senior immigration judge was that the role of UK NARIC was limited to vetting overseas qualifications and that UK NARIC's approval was not needed for a UK qualification. In paragraph 8 of his judgment he said that Mr Malik, who appeared on behalf of the applicant, submitted that paragraph 5 of Appendix A related only to qualifications from abroad. He said Mr Malik pointed to the statement on UK NARIC's own website that UK NARIC "provided a service whereby qualifications from outside the UK are compared to the UK's qualification framework" and to an email from UK NARIC which was before the senior immigration judge. Mr Malik submitted that e-mails from the UK Border Agency to the contrary effect could not displace what was said by UK NARIC itself.

13.
Richards LJ noted that it was further submitted that qualifications from within the United Kingdom were deemed to be of recognised standard if obtained from an institution on a list approved by the Department for Business, Innovation and Skills in accordance with the Education (Listed Bodies) England Order 2007 and that Saxon College was on that list when the applicant obtained his qualification and its removal from the list at a later date could not affect the applicant's qualification. He did not accept the submissions. He said this in paragraph 9 of his judgment:

"It seems to me that the scheme of Appendix A is clear. Certain Master's qualifications from institutions listed in paragraph 58A, institutions which include UK institutions but are not limited to them, count for a specified number of points. Otherwise points have to be determined by reference to the tables, subject so far as material to the proviso in paragraph 5 that points for academic qualification will only be awarded if the qualification is deemed by UK NARIC to meet the recognised standard. There is nothing to suggest that paragraph 5 relates only to overseas qualifications."

14.
He went on to say that there was no provisional machinery setting up a separate regime for UK qualifications, save to the extent expressly provided for under paragraph 1A. He said Appendix A provided on its face a complete code. He could see no basis for qualifying it by reference to a separate regime for UK qualifications as contended for by Mr Malik. He said in particular he thought it wrong to have regard to extraneous material, be it e-mails or policy guidance, in considering the Appendix. To his mind, Mr Malik's submission that there was a lacuna in the Appendix insofar as the generality of UK qualifications was concerned was unsustainable.

15.
Mr Mohammad made a bold submission that the decision of Richards LJ was wrong. He said the court probably did not have the advantage of a fully argued case at a permission stage. It is apparent, however, that the applicant in AH was represented by very experienced counsel, namely Mr Z Malik, and we just do not accept the proposition that the case on behalf of the applicant was not fully argued. The submission of Mr Mohammad that even if the reference to UK NARIC included it having power to judge the equivalence of the first-named appellant's qualification such was not in accordance with the law and should have been disregarded, in our view is wholly without merit. The fact that the Secretary of State might have chosen different means of testing the equivalence English qualification is neither here nor there.

16.
In Secretary of State for the Home Department v Pankina [2010] EWCA Civ 719 Sedley LJ with whom the other members of the Court agreed and said that he accepted that the decision of the Court of Appeal in R v Secretary of State for Social Services, ex-parte Camden LBC [1987] 1 WLR 819 established that a measure which had to be laid before Parliament was not vitiated if, rather than being self-contained, it derived part of its content from an extant and accessible outside source. He accepted that that had a direct bearing on the Statement of Immigration Rules which under section 3(2) of the 1971 Act, likewise had to be laid before Parliament. It meant that the answer to the question whether the immigration rules could lawfully incorporate provisions set out in another document which had not itself been laid before Parliament was that the bare fact that a measure laid before Parliament was not self-contained did not render it ineffective. In paragraph 27 of his judgment he mentioned that counsel for Ms Pankina had drawn attention to places where plainly legitimate reference was made in the rules to outside sources: for example, by rule 6 a private education institution must offer courses recognised by an appropriate accreditation body. He said one could add Appendix C itself, which perfectly reasonably relied on bank statements and the like, so the objection was not to rules which relied on outside sources for evidence of compliance. Such considerations equally apply to the circumstances of this case.

17.
In our view the interpretation of Appendix A to HC 395, as amended, is perfectly clear. The First-tier Tribunal judge did not make an error of law in his determination in finding that the first-named appellant did not comply with the requirements of paragraph 345C of HC 395, as amended. Therefore his decision dismissing the appeals shall stand.

Signed

P A Spencer

Judge of the Upper Tribunal

Immigration and Asylum Chamber