



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

Mirza (ACCA Fundamental level qualification – not a recognised degree) [2013] UKUT 00041(IAC)

THE IMMIGRATION ACTS

Heard at Field House

Determination Promulgated

On 7 December 2012

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Before

UPPER TRIBUNAL JUDGE CRAIG

UPPER TRIBUNAL JUDGE O'CONNOR

Between

ADEEM RASOOL MIRZA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Appellant: No representation

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

The ACCA does not have degree awarding powers and the qualifications which it awards are not UK recognised degrees.

DETERMINATION AND REASONS

1.

The appellant is a national of Pakistan, who was born on 19 January 1986. He arrived in this country on 21 August 2010 with leave to enter as a Tier 4 (General) Student. This leave expired on 22 December 2011. While in this country, he successfully completed the Fundamental Level of the ACCA qualification. He completed his exams in December 2010 and received the certificate confirming his successful completion of the course in March 2011.

2.

On 21 December 2011 the appellant applied for further leave to remain in the United Kingdom as a Tier 1 (Post-Study Work) Migrant, under paragraph 245FD of the Immigration Rules. It is common

ground that in order to qualify under this rule, the appellant was required to show that he would be entitled to be awarded 75 points or more under paragraphs 66 to 72 of Appendix A. The appellant also needed to be awarded 10 points under paragraphs 1 to 3 of Appendix B (the English language requirement).

3.

Under the qualification section of his application the appellant claimed 20 points for his ACCA qualification, claiming that this was a "United Kingdom recognised degree at Bachelor's level". He claimed a further 55 points under Appendix A, which would have been awarded had his ACCA qualification been accepted as a recognised degree at Bachelor level.

4.

The respondent refused this application on 13 February 2012. The respondent did not accept the ACCA as a recognised body for the purposes of granting degrees, and the appellant was accordingly awarded no points under Appendix A. As a consequence of being awarded zero points under Appendix A, he was not entitled to be awarded the requisite 10 points under Appendix B either. It should be noted with regard to this latter requirement, that this failure is entirely technical. It was quite clear to us during the hearing, in which the appellant represented himself, that his English language skills, both written and spoken, were of the highest order.

5.

The appellant appealed against this decision to the First-tier Tribunal. His appeal was heard before First-tier Tribunal Judge Norton-Taylor, sitting at Hatton Cross on 23 April 2012, but was dismissed in a determination dated 28 April 2012 and promulgated shortly thereafter. First-tier Tribunal Judge Norton-Taylor also concluded that the appellant had not been awarded a United Kingdom recognised degree at Bachelor's level.

6.

The appellant now appeals to the Upper Tribunal against this decision, permission having been granted by Designated First-tier Tribunal Judge Macdonald.

7.

The issue before us is a narrow one, which is whether or not the ACCA qualification can properly be said to be of a type required by Table 10 to Appendix A of the Rules. If the ACCA is a relevant qualification, then it is not suggested on behalf of the respondent that his application would fail under the Rules for any other reason.

8.

We are aware that this is an issue that has been argued before this Tribunal on a number of previous occasions, but there is as yet no reported decision on the point. We are also aware that there have been conflicting decisions of the First-tier Tribunal on this issue, one of which, supportive of the appellant's position, was relied upon by the appellant in this case.

Submissions

9.

In the course of his succinct and well-argued submissions, the appellant drew our attention to paragraph 53 of the respondent's Policy Guidance, wherein it was stated that an applicant could claim 20 points if he or she had been awarded a "UK recognised degree at Bachelor, Master or PhD level".

He asserted that the word “level” meant “equal, equitable, same” and that, in the context of these meanings, the ACCA qualification should entitle him to be awarded the points.

10.

The appellant noted that at paragraph 55 of the Guidance, referring to the requirement that the degree had to have been awarded by a United Kingdom recognised body, such a body was defined as “an institution which has been granted degree awarding powers by Royal Charter”; whilst the appellant accepted that he had never seen, and could not produce to the Tribunal, a Royal Charter which in itself gave degree awarding powers to ACCA he, nevertheless, placed reliance upon a document contained within his bundle relating to chartered bodies generally. It was common ground that the ACCA was governed by a Royal Charter.

11.

The appellant then drew the attention of the Tribunal to the recent Supreme Court decision in *Alvi* [2012] UKSC 33, and submitted that this decision was of application to his appeal because the respondent's policy was contained within this Guidance.

12.

The appellant then referred us to a letter from the National Recognition Information Centre for the United Kingdom (“UK NARIC”) in which UK NARIC had stated that the award from the ACCA of its “fundamental level” qualification “is considered comparable to British Bachelor (honours) degree standard”.

13.

With regard to the definition of “degree level study” within paragraph 6 of the Immigration Rules, the appellant asked the Tribunal to note that it was stated that this was a course which leads to a recognised United Kingdom degree at Bachelor’s level or above”. As his qualification was at Bachelor’s degree level, it should have been treated as qualifying under the Immigration Rules.

14.

Mr Tufan submitted that the ACCA professional level qualification does not purport to be, and is not, either a Bachelor’s or a postgraduate degree. It is a professional accountancy qualification. It neither is, nor should be, considered as being a Bachelor’s degree.

15.

He reminded the Tribunal that the definition of degree level study within the immigration rules mirrored that contained within Section 214 of the Education Reform Act 1988 and that to fit within the definition in paragraph 6(a) of the rules there must be an award on behalf of a particular type of body of a qualification designated by the awarding institution to be a “Bachelor’s degree”. That institution must be a body authorised by Royal Charter or Act of Parliament to grant degrees. The ACCA is not such an institution. Whilst it has a Royal Charter, it is not authorised by that Charter to grant degrees.

16.

To fit within paragraph 6(b) of the rules, the qualification awarded by the institution must be designated by that institution as being of Bachelor’s degree level, which this professional qualification is not, and must also be a recognised award under Section 214(2)(c) of the Education Reform Act 1988, and the ACCA qualification is not designated in that way. The Tribunal was also asked to note that the website of the Department for Business Innovation and Skills confirmed that the ACCA was not a body included within the definition as being able to grant degrees.

17.

The respondent further relied on paragraph 59 of the guidance, which, it was noted, confirmed that professional and occupational qualifications were not acceptable unless of a type recognised at paragraph 53. It was submitted that the ACCA did not fall within this definition, so could not purport to be a degree.

18.

Mr Tufan continued by asserting that whilst the ACCA may be treated by others as being of equivalent level to a Bachelor's degree, in order to be so considered under the Rules there were three requirements. First, the qualification itself must be a degree; secondly, this degree has to have been issued by a particular type of institution (that is an institution authorised either by Royal Charter or under an Act of Parliament to grant degrees, or designated by the Secretary of State as so authorised); and thirdly, the award itself must have been designated by that institution as being of a particular level, which the ACCA has not been. This last point was underpinned by the fact that the ACCA had arranged for students to obtain degrees at Oxford Brookes University whilst studying for their qualifications. On its own website, with reference to also obtaining a degree at Oxford Brookes University, it is said that there are numerous benefits to completing such a degree because it was a "powerful combination" of qualifications to have. Accordingly, it was clear that the ACCA itself did not consider its professional qualifications to be "degrees".

19.

Finally, on behalf of the respondent, Mr Tufan submitted that had the Secretary of State (whose Rules have been approved by Parliament), wished to allow qualifications other than degrees to be accepted, table 10 within Appendix A could and would have been drafted differently, and would not have been limited to a "UK recognised degree".

Discussion

20.

Paragraph 245F of the Immigration Rules sets out "the purpose of this route" as being "to encourage international graduates who have studied in the UK to stay on and do skilled or highly skilled work". Paragraph 245FD then materially states as follows:

" 245FD requirements for leave to remain

To qualify for leave to remain as Tier 1 (Post-Study Work) Migrant an applicant must meet the requirements listed below. Subject to paragraph 245FE(a)(i) if the applicant meets these requirements, leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

(a) The applicant must not fall for refusal under the general grounds for refusal, and must not be an illegal entrant.

(b) The applicant must previously have been granted entry clearance or leave to remain under Tier 1 (Post-Study Work) Migrant.

(c) The applicant must have a minimum of 75 points under paragraphs 66 to 72 of Appendix A."

21.

The applicant is also required to have a minimum of 10 points under paragraphs 1 to 3 of Appendix B (the English language requirement) and must further be awarded a minimum of 10 points under paragraphs 1 to 2 of Appendix C (the financial requirements).

22.

Paragraphs 66 to 68 of Appendix A to the Rules stated at the material time as follows:

“66. An applicant applying for entry clearance for leave to remain as Tier 1 (Post-Study Work) Migrant must score 75 points for attributes.

67. Available points are shown in Table 10.

68. Notes to accompany the table appear below the table.”

23.

The material part of table 10 requires an applicant to have been awarded either (a) a UK recognised Bachelor or postgraduate degree, or (b) a UK postgraduate certificate in education or professional graduate diploma of education, or (c) a Higher National Diploma (“HND”) from a Scottish institution.

24.

Paragraphs 69 to 72 of Appendix A to the Rules stated as follows:

“69. Specified documents must be provided as evidence of a qualification and, where relevant, completion of the United Kingdom foundation programme office affiliated foundation programme as a postgraduate doctor or dentist (06.04.2010 HC 439).

70. A qualification will have been deemed to have been ‘obtained’ on the day on which the applicant was first notified in writing, by the awarding institution, that the qualification had been awarded.

71. If the institution studied at is removed from one of the relevant lists referred to in table 10, or from the Tier 4 Sponsor Register, no points will be awarded for a qualification obtained on or after the date the institution was removed from the relevant list or from the Tier 4 Sponsor Register.

72. To qualify as an HND from a Scottish institution, a qualification must be at level 8 on the Scottish Credit and Qualifications Framework.”

25.

A “UK Bachelor’s degree” is defined within paragraph 6 of the Immigration Rules as meaning either

“(a) a programme of study or research which leads to the award, by or on behalf of a university, college or other body which is authorised by Royal Charter or by or under an Act of Parliament to grant degrees, of a qualification designated by the awarding institution to be of Bachelor’s degree level; or

(b) a programme of study or research, which leads to a recognised award for the purposes of Section 214(2)(c) of the Education Reform Act 1988, of a qualification designated by the awarding institution to be at Bachelor’s degree level” .

26.

It is accepted that the appellant has been awarded the ACCA Fundamentals Level qualification. The question arises before the Tribunal, not for the first time, as to whether that qualification counts for the purposes of the Rules as a UK recognised Bachelor or postgraduate degree.

27.

In *Mahad v ECO* [2009] UKSC 16, Lord Brown, when considering the question of construction of the immigration rules, said as follows:

“[10] The rules are not to be construed with all the strictness applicable to the construction of a statute or a statutory instrument but, instead, sensibly according the natural and ordinary meaning of the words used, recognising that they are statements of the Secretary of State’s administrative policy. The respondent’s counsel readily accepted that what she meant in her written case by the proposition “the question of interpretation is...what the Secretary of State intended his policy to be” was that the court’s task is to discover from words used in the Rules what the Secretary of State must be taken to have intended...that intention is to be discerned objectively from the language used, not divined by reference to supposed policy considerations. Still less is the Secretary of State’s intention to be discovered from the Immigration Directorates Instructions.”

28.

It is accordingly clear that the Secretary of State’s Guidance Note cannot be used as a tool to interpret the meaning of the Immigration Rules. If, however, the terms of the relevant Tier 1 (Post-Study Work) Guidance Note were more beneficial to the appellant than the Immigration Rules and the Secretary of State failed lawfully to consider the terms of the Guidance Note when coming to her conclusions on the appellant’s application, the Secretary of State’s decision would not be in accordance with the law. This was a point specifically pursued by the appellant during the hearing before the Upper Tribunal.

29. To that end the relevant paragraphs of the Secretary of State’s Guidance Note stated as follows:

“ **Attributes**

Qualification

53. An applicant can claim 20 points if he/she has been awarded one of the following qualifications:

- a United Kingdom recognised degree at Bachelor, Master or PhD level; or
- a Postgraduate Certificate in Education (PGCE)/Professional Graduate Diploma of Education (PGDE); or
- a Higher National Diploma (HND) from a Scottish institution; or
- United Kingdom recognised degree at Bachelor level or postgraduate level.

54. For a qualification to be considered a United Kingdom recognised degree at Bachelors, Masters or PhD level, it must have been awarded by a United Kingdom recognised body.

55. A United Kingdom recognised body is an institution which has been granted degree awarding powers by a royal charter, an Act of Parliament or the Privy Council. All United Kingdom universities and some higher educational colleges are United Kingdom recognised bodies.

56. Further information on the United Kingdom recognised bodies can be found on the website of the Department for Innovation, Universities and Skills (DIUS) at [HTTP://www.DCSF.gov.uk/recognisedukdegrees](http://www.DCSF.gov.uk/recognisedukdegrees) .

Postgraduate certificate in education

57. A United Kingdom postgraduate certificate in education (PGCD)/Professional Graduate Diploma of Education (PGDE) is acceptable for this requirement. It is not necessary for the awarding body to be a United Kingdom recognised body.

Qualifications that are not acceptable

59. Qualifications that cannot be used for the award of points include:

- Foundation degrees;
- Honorary degrees;
- Qualifications awarded in the United Kingdom by overseas awarding bodies;
- Qualifications undertaken solely at an overseas campus of United Kingdom institution;
- Professional and vocational qualifications (unless they are of a type listed in paragraph 53); and
- Postgraduate certificates and diploma (except PGCE/PGDE).

60. An eligible qualification is one which has been awarded 20 points under this scoring section. Therefore, if the applicant fails to score points in this section, he will not score points for any of the other attributes.”

30.

The letter from UK NARIC dated 12 October 2011 states that the fundamental level of ACCA's qualification “is considered comparable to British Bachelor (honours) degree standard”.

31.

The supporting letter dated 18 October 2011 from Kaplan Financial (the institution at which the appellant studied for his ACCA qualification) includes the following:

“The Association of Chartered Certified Accountants (ACCA) is an internationally recognised Professional Accountancy Qualification. Students who have completed the fundamentals level (first nine papers) receive substantial exemptions from the UK Bachelors Degree, typically entering as a third year student.”

32.

The appellant also relied on a letter from the ACCA dated 3 March 2011, which he was sent upon successfully completing the fundamental level of the ACCA qualification. In this letter, it is stated on behalf of the ACCA as follows:

“ACCA is currently governed by the regulations of the UK Companies Act which state that the final level of the examinations must be at least equivalent to a 3 year UK degree. In 1993, ACCA's recognition as a recognised Qualifying Body under the Companies Act 1989 meant that it had to set examinations which were at least equivalent in standard to those required to obtain a degree from a university in the UK.

At that time, the standard of the foundation stage was similar to that of the first year examinations of a three year degree programme, the certificate stage is similar to the second year examinations, and the professional stage is similar to the final examinations of a Masters degree.

The 2001 syllabus equivalents are: Part 2 is the same standard as a three year UK degree programme, and part 3 is the same standard as a UK Masters degree.

Completion of the fundamentals level of the 2007 syllabus has been equated to the standard of a UK Bachelors degree. ACCA literature states that the professional level examinations are set to a standard comparable to that required in the final examination of the UK Masters degree ...”

33.

The core of the appellant’s case is that he is entitled to rely upon a qualification of equivalent or comparable level to a degree, given the terms of paragraph 53 of the Secretary of State’s guidance, and the letters from UK NARIC.

34.

We reject this submission. Neither the Immigration Rules nor the Secretary of State’s guidance state that the required qualification can be either equivalent, or comparable, to a UK recognised degree. The relevant requirement under the Rules is clear and unambiguous. The requisite points can only be given if an applicant has been awarded a “UK recognised degree” at Bachelors level or above. The guidance itself provides, at paragraph 59, that professional and vocational qualifications cannot be used to obtain the award of points unless they fall within those qualifications listed in paragraph 53. The qualifications listed in paragraph 53 of the guidance merely reflect those set out in Table 10 to the Immigration Rules. The Secretary of State’s guidance does not set out a more beneficial position for applicants.

35.

We conclude that the ACCA fundamentals level qualification is not a relevant qualification for the purposes of Table 10 to Appendix A, nor is it of a type referred to in the Secretary of State’s guidance. It is not a United Kingdom recognised degree or a postgraduate certificate or professional graduate diploma in education.

36.

In order to come within the definition of “a UK Bachelors degree” contained within paragraph 6 of the Immigration Rules, a qualification designated as being at Bachelor’s degree level must have been awarded by a body authorised (a) by Royal Charter or (b) by, or under, an Act of Parliament, to grant degrees; alternatively, it must be a qualification designated as being at Bachelor’s degree level and be “a recognised award for the purposes of Section 214(2)(c) of the Education Reform Act 1988.”

37.

There is no evidence before us that the ACCA is a body authorised by Royal Charter or by an Act of Parliament (in this case the relevant Companies Act) to grant degrees.

38.

Under Section 214(2)(c) of the Education Reform Act 1988, the Secretary of State is given power to designate as a ‘recognised award’, a specified award granted by a person named in the order. On the evidence before us, neither the appellant’s qualification, nor any other qualification awarded by ACCA, has been designated pursuant to this section.

39.

Even if we were wrong in our conclusions above, it cannot even be argued, in our judgment, that the qualification has been “designated” by the ACCA as being of Bachelor’s degree level. Indeed, the fact that the ACCA encourages students to obtain a separate and independent degree from Oxford Brookes University, because this would enhance their qualifications, suggests that ACCA recognise that their qualifications are not categorised as a degree.

40.

In short, therefore, because the definition of a UK Bachelor's degree in paragraph 6 of the Immigration Rules requires either that that award has been made by a body which has the power or authority to award degrees, which the ACCA does not have (or, certainly, there is no evidence before us that it has this authority), or that the qualification awarded has otherwise been designated as a recognised award for the purposes of Section 214 of the Education Reform Act, which this qualification has not, this appeal must fail under the rules. The appellant is not entitled to 75 points under Appendix A of the Immigration Rules and neither is he entitled to 10 points under Appendix B.

41.

Article 8 of the ECHR was not argued before us, was not in the original grounds of appeal to the First-tier Tribunal and was not raised in the grounds of application for permission to appeal to the Upper Tribunal; we therefore do not consider such ground.

42.

We conclude that the First-tier Tribunal's decision does not contain the making of an error on a point of law.

Decision

The decision of the First-tier Tribunal did not involve the making of an error of law, and accordingly its decision to dismiss the appeal stands. This is a decision of the panel .

Signed Date: 28 December 2012

Upper Tribunal Judge Craig