

Student B:

- Student on a continuing course, failed a module & then the re-sit for that module.
- Student had to re-take this module (3<sup>rd</sup> attempt).
- Applied for Tier 4 extension and included transcript showing opportunity 3 for failed module.
- Application refused due to receiving zero points for visa letter.
- Reason for refusal *"You submitted a transcript which states that you failed the IC Design exam of the EEM111 on two previous attempts, therefore the secretary of state is not satisfied that the course in respect of which the visa letter has been issued satisfies the requirement for a grant to leave as a tier 4 (General) migrant because you have previously re-sat the same examination or repeated the same module more than once"*.

What we did and result:

- Referred B to solicitor to represent him for appeal.
- ISA wrote a letter to explain the transcript and the Tier 4 re-sit rules in support of his appeal quoting the relevant paragraph from the Immigration Rules.
- B agreed for ISA to attend appeal hearing (as observer).
- At hearing, ISA spoke to solicitor and barrister to advise on Tier 4 rules, in particular the re-sit rules.
- Barrister asked ISA to give evidence as expert witness.
- Judge had not come across this aspect of Tier 4 previously.
- Appeal upheld due to the "clear and cogent" evidence provided by ISA

Mr [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Our Ref [REDACTED]  
Case ID [REDACTED]  
Date 28 August 2009

Dear Mr [REDACTED]

**Application to remain as a Tier 4 (General) Student Migrant**

Re: Mr [REDACTED] India [REDACTED]

**SECTION A: DECISION AND REASONS**

On 05 May 2009 you made a combined application for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant under the Points Based System (PBS) and for a biometric immigration document. An official has considered your application on behalf of the Secretary of State.

You have claimed 30 points for your visa letter. However, the Secretary of State is not satisfied that the course in respect of which the visa letter has been issued satisfies the requirements for a grant of leave as a Tier 4 (General) migrant because you have previously re-sat the same examination or repeated the same module more than once. The Secretary of State is therefore not satisfied that you have met the requirements for 30 points to be awarded under Appendix A of the Immigration Rules.

Therefore you do not satisfy the requirements of the Immigration Rules for this category and it has been decided to refuse your application for leave to remain as a Tier 4 (General) Student Migrant under paragraph 245ZX(c) of the Immigration Rules.

In making the decision to refuse your application, careful consideration has been given to the following:

On 19 February 2007 you were granted leave to enter the United Kingdom as a student until 31 August 2008.

On 22 August 2008 you were granted leave to remain in the United Kingdom as a student until 30 June 2008.

Please find enclosed your passport.

**SECTION B: POINTS CONSIDERED AND AWARDED**

Under the immigration rules for Tier 4 (General) Student applicants must, amongst other things:

- score 30 points under Appendix A (Attributes) and provide the specified documents; and
- score 10 points under Appendix C (Maintenance (Funds)) and provide the specified documents.

Detailed below is your score for each of the areas in which points were claimed and the reasons for awarding the respective points.

### Attributes – Valid visa letter

Points claimed	Points awarded
30	0
<ul style="list-style-type: none"><li>• You have submitted a visa letter from University of East London dated 01 May 2009.</li><li>• You have also submitted a letter from the university dated 27 April 2009 stating that you are currently repeating module EEM111. A transcript has also been supplied which states that you failed the IC Design exam of the EEM111 on two previous attempts in 2007.</li><li>• Therefore the Secretary of State is not satisfied that the course in respect of which the visa letter has been issued satisfies the requirements for a grant of leave as a Tier 4 (General) migrant because you have previously re-sat the same examination or repeated the same module more than once.</li><li>• No points have been awarded in this area, in line with published guidance.</li></ul>	

### Maintenance (Funds)

Points claimed	Points awarded
10	10
<ul style="list-style-type: none"><li>• Points awarded as claimed.</li></ul>	

### SECTION C: RIGHT OF APPEAL

You are entitled to appeal this decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002. A notice of appeal is enclosed which explains what to do. Also enclosed is advice from the Legal Services Commission on how to get help.

The appeal must be made on one or more of the following grounds:

- that the decision is not in accordance with Immigration Rules;
- that the decision is unlawful because it racially discriminates against you;
- that the decision is unlawful because it is incompatible with your rights under the European Convention on Human Rights;
- that the decision breaches rights which you have as an European Economic Area (EEA) National or member of such a person's family under Community Treaties relating to entry to or residence in the United Kingdom;
- that the decision is otherwise not in accordance with the law;
- that a discretion under the Immigration Rules should have been exercised differently;
- that your removal from the United Kingdom as a result of the decision would:
  - breach the United Kingdom's obligations under the 1951 Refugee Convention;
  - be incompatible with your rights under the European Convention on Human Rights.

You should not appeal on grounds that do not apply to yourself. You should also give arguments and any supporting evidence, which justifies your grounds.

### One-Stop Warning - Statement of Additional Grounds

- You must now inform us of any reasons why you think you should be allowed to stay in this country. This includes why you wish to stay here, and any grounds why you should not be removed or required to leave.

11 September 2009

Asylum and Immigration Tribunal

Dear Sir/madam

**Application to remain as a Tier 4 (General) Student Migrant**

Re: Mr [REDACTED], Indian, DOB: [REDACTED]  
UEL Student number: [REDACTED]  
UKBA ref: [REDACTED] Case ID: [REDACTED]

I am writing to support the above student's appeal to remain in the UK under Tier 4 (General) Student Migrant rules, as he was awarded '0' points for his visa letter.

Mr [REDACTED] took module EEM111 for the first time in the academic session 2007/08 and failed a part of this module. This is noted as attempt 1 on our transcript. This was not a re-sit.

Mr [REDACTED] first re-sit assessment for this module was taken in the same academic year, under the terms of our Academic Framework. He failed this module and this is noted as attempt 2 on our transcript.

Mr [REDACTED] then did a re-take of the module for the second time in the academic session 2008/09. He passed the module at this second re-sit opportunity.

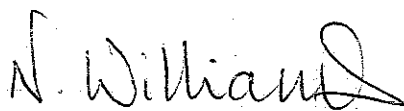
This is in line with the Student Immigration Rules paragraphs 245ZT to 245ZD, "If the applicant is re-sitting examinations or repeating a module of a course, the applicant must not previously have re-sat the same examination or repeated the same module more than once." Mr [REDACTED] has only re-sat/re-taken module EEM111 a maximum of two times and the visa letter was issued to him on this basis. At the time of his Tier 4 application, he was re-sitting module EEM111 and he had not re-sat that same module more than once.

Mr [REDACTED] has maintained satisfactory attendance on his course and will now progress onto his dissertation from September 2009. He is expected to complete his studies by February 2010.

In view of the information provided, I hope you will award 30 points for the visa letter and reconsider the original refusal. I hope you will grant Mr [REDACTED] leave to remain in the UK under Tier 4, so that he can move onto his dissertation and complete his studies by 28 February 2010.

Please contact me if you require further assistance.

Yours sincerely



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Head of International Students Advice



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In the Asylum and Immigration Tribunal

Appeal Number [REDACTED]

THE IMMIGRATION ACTS

Heard at: Taylor House

On: [REDACTED] 2009

Prepared: [REDACTED] 2009

Determination Promulgated

Before :

Immigration Judge [REDACTED]

Between

Mr [REDACTED]

and

Secretary of State for the Home Department

Appellant

Respondent

Representation:

For the appellant: Mr [REDACTED]

For the respondent: Ms [REDACTED]

DETERMINATION AND REASONS

1. The appellant is a citizen of India, born [REDACTED]. His immigration history is set out in paragraph 4.
2. The appellant was represented at the hearing by Mr [REDACTED] of Counsel. He called the appellant and Mr J Kayan to give oral evidence. The respondent was represented by Ms H Yazdani, a Presenting Officer. Oral submissions were made on behalf of both parties.
3. The appellant appeals against the respondent's decision on 28 August 2009 to refuse him leave to remain in the United Kingdom under paragraph 245ZX of HC395. Paragraph 245ZX sets out the requirements to be met by an applicant for leave to remain in the United Kingdom as a Tier 4 (General) Student. The burden of proof is on the appellant to establish on a balance of probabilities that he meets all of the relevant requirements of HC395. The respondent was not satisfied that, pursuant to paragraph 245ZX(c), the appellant could establish that he scores a minimum of 30 points for attributes in respect of the visa letter submitted, pursuant to paragraphs 113 to 119 of Appendix A.
4. The appellant arrived in the United Kingdom on 19 February 2007 and was granted leave to enter as a student until 31 August 2008. This leave was extended and expired on 30 June 2009. The appellant undertook a course at the University of East London ("UEL"), leading to an MSc in computer systems engineering. The appellant applied on 5 May 2009 for further

leave to remain in the United Kingdom as a student, and it is the refusal of that application which is the subject of this appeal.

5. The sources of evidence as to the appellant's claim consist of the application form, the documents submitted therewith, the grounds of appeal, a bundle of documents prepared on the appellant's behalf for the hearing, and the oral evidence. Among the documents in the bundle are the appellant's witness statement, and various letters from UEL, including the visaletter dated 1 May 2009. I have had regard to [REDACTED] skeleton argument, to the reasons for refusal letter dated 28 August 2009, and the explanatory statement.
6. This appeal turns on a single issue. The respondent noted in the reasons for refusal letter that the appellant had claimed 30 points in respect of the visa letter submitted from UEL dated 1 May 2009. However, a further letter dated 27 April 2009 from UEL stated that the appellant was currently repeating module EEM111. A transcript showed that the appellant had failed the IC Design examination of module EEM111 on two previous occasions in 2007. The appellant therefore did not satisfy the published guidance and no points could therefore be awarded for attributes in respect of the visa letter.
7. The evidence of the appellant and the submissions made on his behalf are to the following effect: The appellant confirms his immigration history as set out above and his studies in the United Kingdom. He is currently engaged on the dissertation programme of his course, which he expects to complete in February 2010. The point taken by the respondent arises from paragraph 119 of Appendix A to HC395. The paragraph reads as follows: "If the applicant is re-sitting examinations or repeating a module of a course, the applicant must not previously have re-sat the same examination or repeated the same module more than once. If this requirement is not met then no points will be awarded for the visa letter ....". The rule thus on its face allows three attempts at any examination or module. An applicant may sit an examination, fail it, and then re-sit on a maximum of two occasions, thus not having previously re-sat it more than once.
8. Mr Kayan, who gave evidence on the appellant's behalf, is UEL's International Student Advisor. He confirmed in oral evidence the written record provided by UEL which shows that the appellant had in the 2007/8 academic year twice sat and failed one of the examinations for Module EEM111 of the course. He had therefore in accordance with UEL's own rules re-registered for this Module in 2008/9, and passed it.
9. I found the appellant's evidence and that of Mr Kayan clear and cogent. The visa letter requirement under paragraph 245ZX is the sole ground of refusal, and for the reasons set out above, I conclude that the appellant meets this. I therefore find on a balance of probabilities that the appellant meets the relevant requirements of HC395. His appeal is accordingly allowed.

### Decision

I allow the appeal on immigration grounds.

Signed

Immigration Judge

Dated

1 November 2009