had not undertaken the reduced workload because of QUT's usual requirements or because of a specific direction from an appropriate officer. Iloste had the opportunity to meet the three-quarter workload by increasing the academic component of the course and decreasing his hours of 'Approved Employment', but he had chosen to continue to combine full-time employment and part-time study.

The AAT considered that 'in an era of . . . alternative teaching and learning strategies . . .' the 'Approved Employment' component of the course should be considered in relation to the determination of full-time workload, and agreed with the decision of Davies J in *Harradine v Secretary, DSS* (1988) 19 FLR 463 (in the context of the *Social Security Act 1991*), that it is the character of the study rather than the time spent in lectures and tutorials which will determine whether, in respect of any particular period, a person is engaged in a course of education on a full-time basis. However, to be considered, the 'Approved Employment' component of the course had to be assigned a 'unit' rating compatible with the rating for the academic component of the course. In Iloste's case, although 'Approved Employment' was part of the structure of the Bachelor of Architecture course, it had no assigned subject code, no credit point rating or assigned contact hours relative to the academic component of the course. Consequently, the AAT had no alternative but to find the 'Approved Employment' component could not be considered as part of Iloste's workload for the purposes of regulation 35. The AAT noted that commencing in 1996, 'Approved Employment' had a subject code and total rating of 60 credit points for the final 3 years of the course and suggested that, as a result, Iloste could be eligible for AUSTUDY. Leave was reserved for Iloste to make a new application if the need arose.

Formal decision

The AAT affirmed the decision under review.

[S.L.]

SSAT decisions

Important note: Decisions of the Social Security Appeals Tribunal, unlike decisions of the Administrative Appeals Tribunal and other courts, are subject to stringent confidentiality requirements. The decisions and the reasons for decision are not public documents. In the following summaries, names and other identifying details have been altered. Further details of these decisions are not available from either the Social Security Appeals Tribunal or the Social Security Reporter.

Social Security

Job search allowance: 'homeowner'; security of tenure

B and Secretary to DSS

Decided: 13 August 1996.

In late 1995, the Bs moved to a farm property owned by a partnership. The partnership consisted of members of B's extended family; B only had a twelfth share. Previously, the property had been let at commercial rates to non-family members. The Bs entered a verbal agreement with the partnership that the Bs would pay $110 a week rent; and until B found employment in the area, he could work for 12 hours a week on the property in lieu of paying rent.

B had expected to find work within 3 months of moving to the property. However, this did not eventuate, and the local employment market was very poor. After some months, B was approached by the partnership with a view to paying rent from 1 July 1996 regardless of his employment status.

B applied for job search allowance on 9 February 1996. His application was rejected by the DSS on the basis that he was a homeowner, and his assets exceeded the threshold above which the allowance was not payable.

The SSAT distinguished between B's interest in the land as a one twelfth partner in the partnership that owned it, and his interest by virtue of the verbal tenancy agreement with the partnership. It followed the AAT decision of *Reyes* (1993) 77 *SSR* 1116, and held that B's share in the partnership, while it entitled him to a share in the proceeds of the property, did not give him any right to occupy the property. This right could only arise under the tenancy agreement.

The SSAT noted the AAT decision of *Johnston and Repatriation Commission* (decided 31 May 1994), in which a lease was held to guarantee sufficient security of tenure because the house concerned was owned by a company, and the tenants were the sole shareholders and two of the three directors — and therefore very unlikely to evict themselves. Here, by comparison, the landlord was not controlled by the tenants; the property had always been let commercially; there was not a minimum term to the lease; and the landlord had indicated that the terms of the lease would be enforced — which meant that as the Bs could not pay (unless their appeal was successful), they would probably be asked to leave.

The SSAT concluded that even with B's interest in the partnership taken into account, the tenancy agreement did not in the circumstances guarentee the Bs reasonable security of tenure. Therefore they were not 'homeowners' as that expression was defined in s.11(4) of the *Social Security Act.* The (higher) 'non-homeowner' threshhold applied to them, and as the Bs' assets did not exceed this level, B was not precluded from job search allowance under the assets test.

AUSTUDY

Secondary study: failure in previous years; circumstances beyond student's control

A and SECRETARY TO DEETYA

Decided: 9 August 1996.

A migrated to Australia in 1985, speaking no English. She attended secondary school from years 8 to 12. She attempted (and failed) Year 12 in 1990 and 1991. In 1996, she again enrolled in Year 12. Her application for AUSTUDY was rejected under Regulation 32(1) on the grounds that she had already undertaken secondary study at that level in two previous years.

The SSAT accepted that in the years leading up to 1990 and 1991, and particularly in those years, language difficulties and, more particularly, ethnic and cultural differences during that difficult time of adolescence, left her very self-conscious, lacking in self-esteem and so-

cially alienated. At that time she did not have the maturity or life experience to be fully aware of, or to deal with, these problems.

The SSAT considered that it was these difficulties that caused her to fail in 1990 and 1991. It held that these difficulties were circumstances beyond A's control, and were not apparent when A began that study. Accordingly, it was appropriate to disregard those years of study under Regulation 32(2)(a)(ii), and A was entitled to AUSTUDY in respect of Year 12 in 1996.

The SSAT viewed the cultural and religious differences and the emotional difficulties arising from them as more significant than the language barrier. (Failure due to English not being the student's 'native language' is a separate ground for disregarding the previous study, under Regulation 32(2)(b).)

[M.D'A.]

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