Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/07383/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 29 October 2013	**On 9 December 2013**

Before

Mr Justice McCloskey, the President
Upper Tribunal Judge Dawson

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

CHRISTELLE SAURELLE IYASSA ZOCK
(No Anonymity Order made)

Respondent

Representation:

For the Appellant: Ms A Everett, Home Office Presenting Officer
For the Respondent: Mr Z Awan, instructed by Mayfair Solicitors.

DETERMINATION AND REASONS

Introduction

[1] On 15 February 2013, Christelle Saurelle Iyassa Zock (hereinafter "*The Respondent*"), a national of Cameroon, was granted entry clearance enabling her to enter the United Kingdom as a student [see Article 4 of the Immigration (Leave to Enter and Remain) Order 200] She duly arrived in the United Kingdom, on 3 March 2013. At the port of entry, enquiries were conducted. These established that the educational institution where she was proposing to study a HND in Business, the International School of Business, had been the subject of a licence revocation and associated removal from

the Register of Sponsors, on 20 February 2013. It appears that she was granted temporary admission to the United Kingdom. Next, on 11 March 2013, a UKBA Official notified the following decision in writing to her:

> *"I therefore refuse you leave to enter the United Kingdom/I therefore cancel your continuing leave. If your leave was conferred by an entry clearance, this will also have the effect of cancelling your entry clearance. The cancellation of your leave will be treated for the purposes of the [1971 Act] and the [2002 Act] as a refusal of leave to enter at a time when you were in possession of a current entry clearance…*
> *I have given … directions for your removal to Cameroon… on 17 March 2013".*

This decision and these directions were contained in Form IS.82.C.

[2] In a related formal UKBA notification, Form IS.125, issued some four months later [on 26 July 2013], the juridical basis of the Appellant's decision-making finds expression. Firstly, it was stated:

> *"… I am satisfied that there has been such a change of circumstances in your case since the leave was given that it should be cancelled. The change of circumstances… is that you obtained leave to enter as a student to study at International School of Business Studies, but subsequent to that the college's sponsor licence has been revoked and it has been removed from the Register of sponsors on 20/02/13."*

Secondly, the following formal decision was notified:

> *"I therefore cancel your leave under paragraph 2A(8) of Schedule 2 of the Immigration Act 1971 and paragraph 321A(1) of the Immigration Rules…*
> *I therefore refuse you leave to enter the United Kingdom".*

Although the formal notifications are far from felicitously worded, it would appear that the following sequence of decisions was made:

a) Initially, the Respondent was granted an entry visa permitting her to enter and remain in the United Kingdom (presumably on certain conditions) for the relevant study purpose.
b) Next, the licence of the sponsor college was revoked and it was removed from the Register of Sponsors.
c) Upon the Respondent's arrival in the United Kingdom, she was granted temporary admission.
d) Subsequently, her entry clearance was formally cancelled.
e) Removal directions were made, but were not implemented.
f) Later, the Respondent's temporary admission to the United Kingdom was cancelled.

[3] **A**gainst this background, the Respondent exercised her right of appeal. In a determination dated 11 August 2013, the First-tier Tribunal allowed her appeal. The following is the key passage in the judgement:

> *"… I find that the decision is materially unfair in accordance with the guidance in **Patel**… the Appellant has lost the fees she paid the college, the fees she paid the UKBA for her visit and the cost of travelling to and living in the UK to date. The UKBA licences colleges and has a responsibility for the effective operation of the sponsorship system. While there is not a policy that covers this situation I consider that granting 60 days of leave to find another sponsor would be appropriate but I leave it to the Respondent to decide the appropriate fair response".*

This gave rise to a conclusion that the decision whereby the Appellant's entry visa had been cancelled was not in accordance with the law. The appeal was allowed accordingly.

The Issue in this Appeal

[4] Permission to appeal was sought by the Appellant on the ground that the Tribunal's reliance on the decision in **Patel** [2011] UKUT 0211 (IAC) was misconceived, as it applies to in-country appeals only. This was considered to constitute an arguable material error of law and permission to appeal was granted accordingly.

[5] What did **Patel** decide? Its *ratio decidendi* is quite clear. It was concerned with the processing of applications for further leave to remain by lawfully present students who wished to continue their studies in the United Kingdom, the UKBA withdrawal of approval for the educational institution in question and the consequential refusal of the extended leave to remain application. The decision of the Upper Tribunal is encapsulated in paragraph 18 of its determination:

> *"For reasons which we will briefly explain we conclude that this decision was not made in accordance with the la, because the Appellant's application was not treated fairly".*

The *ratio* of the decision is that where the licence of a sponsor college has been revoked by the Secretary of State in the course of the processing of an application for a student's variation of leave and the student is neither aware of the revocation nor in any way responsible therefore, the Secretary of State should afford the student a reasonable opportunity to amend the application, prior to its determination, by identifying a new sponsor: see paragraph [22]. The Upper Tribunal considered that this opportunity was required by the operation of two common law principles, namely that of fairness and the equal treatment of all applicants. In thus concluding, the Tribunal observed, in paragraph [20]:

> *"A refusal of leave to remain is a very serious step for the Appellants. Subject to a successful appeal their leave to remain expires and their continued presence in the United Kingdom is unlawful and susceptible to summary removal. Further, there are now statutory restrictions on what material can be submitted post-decision in certain classes of case…."*

In thus deciding, the Upper Tribunal drew on the decision of the Court of Appeal in **R (Q) v SSHD** [2003] EWCA Civ 364 and its own decision in **Thakur** [2011] UKUT 151.

[6] At this juncture, we draw attention to the operative provision of the Immigration Rules, paragraph 321A(1), which provides:

> *"The following grounds for the cancellation of a person's leave to enter or remain which is in force on his arrival in, or whilst he is outside, the United Kingdom apply:*
>
> *(1.) there has been such a change in the circumstances of that person's case since the leave was given that it should be cancelled".*

The relevant provision of primary legislation engaged is paragraph 2A(8) of Schedule 2 to the Immigration Act 1971. This provides, in material part:

> *"(1.) This paragraph applies to a person who has arrived in the United Kingdom with leave to enter which is in force but which was given to him before his arrival.*
> *(2.) He may be examined by an Immigration Officer for the purpose of establishing –*
> *(a) whether there has been such a change in the circumstances of his case, since that leave was given, that it should be cancelled…*
> *(8.) An Immigration Officer may, on the completion of any examination of a person under this paragraph, cancel his leave to enter.*
> *(9.) Cancellation of a person's leave under sub-paragraph (8) is to be treated for the purposes for the purposes of this Act and Part 5 of the Nationality, Immigration and Asylum Act 2002 as if he had been refused leave to enter at a time when he had a current entry clearance".*

[7] In addition to the relevant provisions of primary legislations and the Immigration Rules, there is a third layer, constituted by an UKBA policy, which, in summary, states the following:

> (a) If the Tier 4 sponsor's licence expires, is revoked or is surrendered and the person concerned has been given a student entry visa but has not yet travelled to the United Kingdom, the visa "*is cancelled*".
> (b) If, in such circumstances, the person travels to the United Kingdom, "*you will not be allowed to enter*".
> (c) If the person concerned is already studying in the United Kingdom and was not "*involved in the reasons why the Tier 4 sponsor had their licence revoked or why it was surrendered*", such person's existing permission to stay will be limited to sixty days or a lesser period if the balance is less than sixty days.

The policy continues:

"You may want to apply for permission to stay with another Tier 4 sponsor during this time."

[8] In the course of argument, it was conceded by Ms Everett (representing the Secretary of State) that if the Respondent had been admitted to the United Kingdom and had been notified of the proposed cancellation of her entry visa on any subsequent date – whether the next day or the following week or whenever – she would have been afforded the sixty day "period of grace" enshrined in the UKBA policy. The purpose of granting her this facility would have been to enable her to address the mischief viz the expiry, revocation or surrender of the Tier 4 sponsor's licence and the associated de-registration by finding another sponsor.

[9] We consider that there is no material distinction between the student (the Respondent) in this case and the student (the Appellant) in **Patel**. Their situations and circumstances are materially indistinguishable. The contention that the decision in **Patel** is confined to in-country appeals is, in our view, unsustainable, as this is nowhere to be found in the *ratio decidendi* of the decision. The in-country appeal in Patel was simply an element of the factual matrix therein. In determining this appeal, we consider it appropriate to focus on the precipitating event in both situations. This consists of the revocation of the sponsor college's licence and consequential de-registration. The precipitating event in both cases is the same. The Secretary of State's argument was that this student should be treated differently from the **Patel** student for the simple reason that the precipitating event in the present case occurred while she was outside the United Kingdom, rather than present therein. We reject this contention. It involves an artificial distinction between the two cases. Furthermore, it entails objectively unjustifiable differential treatment as between a student such as this Respondent and her in-country equivalent or comparator. This would create arbitrary distinctions and unjustifiable inequality of treatment within the body of visiting students as a whole. All of this would be inimical to the common law principles in play, which are fairness and equal treatment. In summary, the unfairness and disparate treatment to be avoided in the two cases are in substance the same. There was no suggestion that **Patel** was wrongly decided. For the reasons explained, we consider that its ratio should be applied to the matrix of the present case.

Decision

[10] For the reasons elaborated we dismiss this appeal and affirm the decision of the First-tier Tribunal.

Edward McCloskey.

The Hon Mr Justice McCloskey
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 05 December 2013