Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/23533/2012

THE IMMIGRATION ACTS

Heard at Birmingham	**Determination Promulgated**
On 4 June 2013	**On 1 July 2013**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

IMRAN KHAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Khan, instructed by GK Associates
For the Respondent: Mr D Mills, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan, born on 13 June 1989. He arrived in the United Kingdom on 21 April 2011, with leave to remain as a student until 14 August 2012.

2. Prior to his leave expiring he applied for further leave to remain as a Tier 4 (General) Student Migrant to follow a course leading to a Diploma in Business and Administrative Management at the School of Information Risk Management situated in Ilford.

3. In his application form the appellant gave details of the number of a Confirmation of Acceptance for Studies (CAS). The application was, however, refused on 12 October 2012. No points were awarded under the points-based system because when the CAS was checked on 10 October 2012, through the checking service, it was apparent that it had been withdrawn. Thus the appellant was not in possession of a valid CAS as required under paragraph 245ZX, subparagraphs (c) and (d), with reference to paragraph 116(c) of Appendix A to the Immigration Rules.

4. The appellant sought to appeal against that decision on the basis that the CAS had been withdrawn by his college by mistake and that it was therefore unfair of the respondent to have acted as has been done.

5. His appeal was heard by Designated Judge French on 28 February 2013. The appeal was dismissed.

6. Leave to appeal was however granted on the arguable unfairness that there was a refusal of the application at a time when the respondent knew that the CAS had been withdrawn but the appellant did not know. Thus, the appeal comes before me upon that permission.

7. Mr Kala Khan, who represents the appellant, invited me to have regard to the appellant's statement and to what was stated by him to the Judge at the hearing.

8. The course for which the application had been made was to commence on 28 August 2012 with an anticipated finishing date of 12 August 2014. After making his application to the college he submitted an application for further leave to remain on 11 August 2012. He had started to study on the course on 28 August 2012 and regularly attended. He was shocked to receive the refusal letter stating that the CAS had been withdrawn. The applicant contacted the college management but the principal was abroad. He met the principal and owner on 13 November 2012 and was assured that the issue would be resolved and his admission would be reinstated.

9. On 16 November he was given a letter by the college explaining the reasons for the withdrawal. Although the college had also been suspended, for the same reasons of withdrawing the CAS submission forms of other students, the principal assured him that the college would be reinstated. He continued to attend courses for that term. In January 2013 he found that the college had closed permanently. The appellant had paid money for his fees and had attended the classes. He maintains that it was not his fault that the situation has arisen.

10. The letter which the college wrote on 15 November 2012 is set out at paragraph 13 of the decision. The letter confirmed that the Confirmation for Acceptance for Studies was withdrawn by the college due to an administrative error. The letter went on to confirm that the college had already notified the UK Border Agency to that effect in a letter dated 13 November 2012. It went on to say that as the college licence has currently been suspended pending further investigation by the UK Border Agency it was unable to re-issue the CAS until the outcome of the investigation.

11. Mr Khan had argued before Judge French that the decision was not in accordance with the law as it was unfair. The case of **Thakur (PBS: decision – common law fairness) Bangladesh [2011] UKUT 00151 (IAC)** was relied upon as also cases on a similar theme of **Patel** and **Naved**. Judge French noted such matters but did not find in this case that the respondent had been at fault in making the decision. The respondent had an application which cited a CAS number and on enquiry it was apparent that it had been withdrawn by the institution. That it was withdrawn was not in issue. The Judge could find no unfairness on the part of the respondent in the decision-making process. The respondent was entitled to rely upon the CAS checking service and the response received was not in error.

12. The Judge made a clear distinction between cases where the Secretary of State had no knowledge and could not have any knowledge that the CAS was mistakenly withdrawn and those cases in which the Secretary of State has revoked a licence but the appellant is not aware of that. It was to the latter situation that **Thakur**, **Patel** and **Naved** had application.

13. Mr Khan, in his submissions, makes complaint that there was no evidence as to how the checking procedure was carried out and contends that in any event, having found the CAS withdrawn, it was the responsibility of the respondent, before refusing the application, to contact the appellant for an explanation.

14. Mr Mills, who represents the respondent, submitted that the process of checking is an automatic one through the computer checking system. As is apparent from the printout of that computer contained in the respondent's bundle, it is clear that the details reveal that the CAS was withdrawn at the time when the printout was made. He submits that it would defeat the object in commonsense of an automatic checking procedure if thereafter the caseworkers are expected to contact those who have been shown on the checking not to have a current CAS.

15. Thus, the issue in this appeal is having checked the CAS and found that it was withdrawn what steps should have been taken prior to refusal by the respondent. Mr Mills submits that the respondent need do nothing further and that the unfairness lay with the college and not with the respondent.

16. Mr Khan submits that given the potential serious nature of the consequences of the appellant it was incumbent upon the respondent, prior to the refusal ,to raise the query at the very least with the appellant as to why his CAS was withdrawn.

17. I bear in mind the case of **Rodriquez (flexibility policy) [2013] UKUT 00042 (IAC)**. This was a case that considered the policy relating to the processing and determination of applications under the points-based system. This was revised with effect from May 2011. In its policy letter of 19 May 2011, the UKBA stated that during an unspecified trial stage appellants would be contacted where mandatory evidence is missing from their applications and given the opportunity to provide this.

18. It was a policy that came into effect to mitigate some of the consequences of the imposition of Section 85A(2) of the Nationality, Immigration and Asylum Act 2002.

19. Since that date on 6 September 2012 a change to the Immigration Rules was made by the addition of paragraph 245AA of HC 395. That provides as follows:-

> "245AA. Documents not submitted with applications
>
> (a) Where Part 6A or other appendices referred to in Part 6A state that specified documents must be provided, the UK Border Agency will only consider documents that have been submitted with the application, and will only consider documents submitted after the application where subparagraph (b) applies.
>
> (b) This subparagraph applies if the applicant has submitted:
>
> (i) A sequence of documents and some of the documents in the sequence have been omitted (for example, if one bank statement from a series is missing);
>
> (ii) A document in the wrong format; or
>
> (iii) A document that is a copy and not an original document.
>
> The UK Border Agency will contact the applicant or his representative in writing, and request the correct documents. The requested documents must be received by the UK Border Agency at the address specified in the request within 7 working days of the date of the request."

20. The policy is set out as an Appendix to the decision and sets out the various steps that should be followed by a decision makes. The first issue is whether there is any missing document. For a request for that evidence

can be made there has to be a reason to believe that it exists before an appellant is to be contacted.

21. I do not find that that policy extends to the circumstances of this particular case. It is not a case of the CAS being missing but rather the categorical statement by the issuer of the CAS that at the time of the investigation it had been withdrawn. It is not a crucial document that had been omitted from the application or missing but existed once and did not exist at the time of the investigation because it had been withdrawn, albeit erroneously. I do not find in those circumstances that the case of **Rodriquez** assists the appellant. What is not clear from the facts of the case is when it was that the college had its license suspended. Clearly, if the college had its license suspended prior to the decision of 13 October 2012, then it is arguable that the situation as in T**hakur** has application in this case. If the license of the college was suspended prior to the decision then it is arguable that that was a fact to be notified to the appellant in advance of the decision in order to enable him to find another college.

22. Neither party seemed to know when it was that the suspension came into operation. It was clearly in operation at the time when the letter of 15 November 2012 was written.

23. Mr Mills sought to make enquiries on the subject but could find no indication as to when that suspension had taken place. The appellant did not know. Mr Mills has now sent me that information. The college's licence was first suspended in July 2011 but was reinstated in August 2011 upon the lodging of Judicial Review. The licence was finally revoked on 24th November 2012. Thus at the time of the decision that College had its licence.

24. Having considered the determination I can find no error as to the approach taken by the Judge. It is extremely unfortunate that the appellant has been placed in a difficult position because of the behaviour of his college. It seems however to me that the remedy is against his college rather than against the respondent.

25. The appellant has been placed to some extent in a limbo situation where he has no existing leave in order to apply to another college in order to get a CAS.

26. It is to be hoped that, given the difficult situation in which the appellant finds himself through no fault of his own, that in the exercise of discretion the respondent might consider that it would be a merciful course to grant the appellant a period of leave in order that he may obtain a CAS from another college so as to continue his study. However that must be a matter for the respondent and not for me.

27. Mr Khan also submits that the Judge was in error in the approach taken to Article 8 of the ECHR. Not only was the appellant a student but it was the clear evidence before the Judge that he had married on 25 January 2013

and lives with his wife. It is noted that his wife's parents, her siblings and all her extended family members are settled in the United Kingdom and many of the appellant's family members also are in the United Kingdom.

28. It seems to me however that it is unreasonable to seek to criticise the Judge because it is noted specifically in paragraph 18 of the determination that Article 8 of the ECHR was not relied upon in the appeal. Mr Khan, who represents the appellant, indicated that it was a decision which he had made to concentrate upon the immigration decision rather than complicate matters by embarking upon the Article 8 argument. I was invited to find that it was reasonable in the circumstances of the appeal to re-visit that aspect of the matter. I disagree. The purpose for the appeal is to determine whether or not the Judge made an error of law. If he was specifically invited not to consider Article 8 then it cannot be said that the Judge acted in error of law. What was apparent from the papers was that the respondent had erroneously issued a notice under Section 47. That clearly could not stand. Thus the appellant's right to raise Article 8 against any removal decision is of course intact and can be made at the appropriate time.

29. It may be sensible for that application to be made to the respondent sooner than later in order to obtain a decision which can then itself be the subject of an appeal.

30. There is nothing to suggest otherwise than that the appellant is a bona fide student, seeking to progress his studies. Little is to be gained by a period of limbo. It is for that reason that I would hope the respondent would be prepared to grant the appellant a period of leave in order for him to sort out his studies.

31. Were it of course simply that the appellant was a student then the comments made by the Tribunal in **MM (Tier 1 PSW; Art.8; private life) Zimbabwe [2009] UKAIT 00037** may be of importance. If a student is in the United Kingdom on a temporary basis there is no expectation of a right to remain in order to further those ties. However, in this case, the appellant has married in the United Kingdom a British citizen with other consequences. The sooner matters are resolved the better for all parties concerned.

Decision

32. The decision of Judge French shall stand, namely that the appeal in respect of the Immigration Rules is dismissed. No finding has been made in respect of Article 8 of the ECHR. That remains at large pending any decision as to removal by the respondent.

Signed Date

Upper Tribunal Judge King TD