Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/01076/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 31 July 2014	**On 12 August 2014**
Prepared 31 July 2014	

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

LIAQAT ALI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Chopra, Counsel instructed by Messrs PGA Solicitors LLP
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Pakistan born on 21 February 1989 appeals, with permission, against a decision of Judge of the First-tier Tribunal Khan who in a determination promulgated on 19 May 2014 dismissed the

appellant's appeal against a decision of the Secretary of State to refuse to grant him leave to remain as a Tier 4 Migrant.

2. The decision which is dated 10 September 2014 stated that the appellant had been refused under the section relating to "Attributes – Confirmation of Acceptance for Studies". It was stated that the CAS on which the appellant wished to rely had been issued by the sponsor who held a legacy sponsor or B rated licence which was only valid if it were assigned to a student who was re-sitting or repeating a module in order to complete a course of study that they had already commenced whilst at the sponsor. The CAS which the appellant had submitted had been issued to study a Diploma in Management commencing on 16 December 2013 which was a new course of study at the institution but that institution, St. Alban's College, was listed as a legacy sponsor and therefore the appellant was not in possession of a valid CAS.

3. The appellant's grounds of appeal, in general form, stated that the decision was not in accordance with the Immigration Rules, discretion under the Rules should have been exercised differently by the respondent and that the decision was unlawful because it was incompatible with the appellant's rights under the ECHR.

4. At the hearing of the appeal before the judge the appellant gave evidence submitting that when he had been issued with the CAS letter the college was a Tier 4 sponsor and not a legacy sponsor as alleged by the respondent.

5. The judge set out his conclusions in paragraphs 22 onwards. He pointed out that when the appellant made his application as a Tier 4 Student Migrant he was a new student whereas the CAS clearly stated that it was a general legacy CAS. The appellant was however a new student and legacy sponsors CAS could only be assigned to existing students or those who were to take re-takes. That was not the case here and therefore the appellant had not provided a valid CAS for the course he intended to study. The appellant therefore did not meet the requirements of the Rules.

6. In paragraphs 26 and 27 of the determination the judge went on to say:-

> "26. With respect I do not agree with the appellant's representative's submission that the appellant is in the middle of his studies and the respondent's decision is in breach of his private life being half way through his studies. The appellant's sponsor does not have the licence to teach the course the appellant is claiming to be studying, therefore he cannot be studying the claimed course.
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> 27. The appellant does not meet the requirements of Appendix FM and paragraph 276 ADE of the Immigration Rules. He has not raised compelling exceptional circumstances for the matter to be considered outside the Immigration Rules. The decision in the case of **Gulshan**

> sets the principle that one has to consider the case within the rule and only if there are exceptional circumstances for consideration to take place outside the rules."

The appeal was therefore dismissed.

7. The grounds of appeal, on which Ms Chopra relied argued that the judge should have applied a common law duty of fairness as he should have taken into account the fact that the college was a legacy sponsor at the date of the CAS and that it should therefore not have issued the CAS to a new student from whom it had taken fees. It was alleged that the appellant was unaware of the college's true status and that the appellant should have been given time to find a new sponsor in circumstances "where he had plainly been exploited by the sponsor". It was alleged that the appellant's situation was manifestly unfair.

8. The grounds went on to say that as the appellant was in the middle of his studies the decision was in breach of his private life and that the judge had misdirected himself by failing to consider that the appellant had been placed in a very difficult position, paying fees and commencing a course in the belief that his sponsor was entitled to teach him when that was not the case. This was a matter not within the contemplation of paragraph 276ADE of the Rules and the judge should therefore have gone on to consider whether or not there was a breach of Article 8.

9. At the beginning of the hearing I endeavoured to ascertain from Ms Chopra the exact course of the appellant's studies since he had arrived in Britain on 12 June 2011. There was scant evidence of the appellant's studies but I have set out the chronology below.

10. Ms Chopra confirmed that the appellant was only arguing that he should have been granted leave to remain on human rights grounds. The decision, she argued, was not in accordance with the law as common law fairness had not been applied. She stated that the judge should have dealt with this argument (although it was not evident that it had been raised before the judge) and that he should have made findings regarding the appellant's knowledge of the true status of the college. She accepted there had been no evidence that the appellant had attended any lectures for the course but stated it had been due to start six days after the refusal letter and he had therefore been unable to do so.

11. She stated that the appellant's evidence had not been challenged at the hearing and there was evidence that he had completed some modules for the ACCA course and that this had not been challenged. She alleged that the judge should have made clear findings regarding the circumstances surrounding the issue of the CAS.

12. Having referred to the judgment of Sales J in **Nagre [2013] EWHC 720 (Admin)** she referred to the determination in **Thakur (PBS decision – common law fairness) Bangladesh [2011] UKUT 00151 (IAC)**. She

stated that the appellant's circumstance is one which is not recognised under the Rules but that there should been flexibility in consideration of his circumstances and it was only fair that he should have been granted an opportunity to find an alternative sponsor.

13. In reply Mr Jarvis pointed out there was nothing in the determination to indicate that there had been any argument advanced that the judge should have applied a common law duty of fairness and that the reality was that the appellant's circumstances were very different from that of the appellant in **Thakur** who had started studying at a college which had the appropriate licence but that that appellant had been unaware that the licence had been withdrawn. The reality was that this appellant had obtained a CAS from a college which was not entitled to issue the CAS which it had issued. This was not a case where the relevant 60 day period was one to which the appellant would be entitled or which would have been appropriate.

14. He referred to the judgment of the House of Lords in **Doody [1993] UKHL 8** and to the judgment in **Nasim & Others (Article 8) Pakistan [2014] UKUT 25 (IAC)** which dealt with, inter alia, the judgment of Lord Carnwath in **Patel [2013] UKSC 72** where he had stated at paragraph 57:-

> "It is important to remember that article 8 is not a general dispensing power. It is to be distinguished from the Secretary of State's discretion to allow leave to remain outside the rules, which may be unrelated to any protected human right. The merits of a decision not to depart from the rules are not reviewable on appeal: section 86(6). One may sympathise with Sedley LJ's call in *Pankina* for 'common sense' in the application of the rules to graduates who have been studying in the UK for some years... However, such considerations do not by themselves provide grounds of appeal under article 8, which is concerned with private or family life, not education as such. The opportunity for a promising student to complete his course in this country, however desirable in general terms, is not in itself a right protected under article 8."

15. In **Nasim** the Tribunal had stated that the chances of an Article 8 right being argued by someone who had come to Britain for temporary purposes successfully was further diminished but it had been wrong to state that an immigration decision in the case of a person who was here for study or other temporary purposes could never be found to be disproportionate.

16. The Tribunal had gone on to say at paragraph 42:-

> "We conclude our general Article 8 findings with the following observation. Each of the appellants' representatives on 19th December confirmed to us that the extent of their clients' Article 8 ambitions was to be granted two years' leave to remain, with permission to work..... Their cases are, accordingly, not put on the basis that the Article 8 rights upon which they rely are necessarily such as to facilitate their indefinite presence in the United Kingdom. Whilst not resiling from what we have said about the case

> of **CDS**, this confirmation serves to underline the general problems facing the appellants in seeking to use human rights law to give effect to their short term socio-economic aspirations."

It is of note that each of the appellants in that case were unsuccessful in their appeals.

17. Mr Jarvis went on to state that the whole ethos of the points-based system was that there should be certainty and that this is what had been incorporated under the Rules. The appellant did not meet the requirements of the Rules and it could not be said that the lack of flexibility in the system was a breach of the common law duty of fairness.

18. Ms Chopra stated that it would only be fair for the appellant to have been granted permission to remain to complete his studies and emphasised that the appellant had not been a party to the revocation of the licence of St Alban's College and therefore it should not be the case that he should have suffered because of the fact that the college issued the CAS when it should not have done so.

Discussion

19. I consider that in any case where reference is made to the Article 8 rights of an appellant it is relevant to know all relevant facts. The appellant's statement, on which he relied at the hearing was silent regarding exactly where he had studied and what qualifications he had gained. It appears that he arrived in Britain on 12 June 2011 in possession of a student visa valid until 13 October 2013. It appears moreover that that was to study at Brentford College. There is no evidence that the appellant ever studied there but the reality is that on 10 August 2012 it appears that that college lost its licence and that the appellant's leave was curtailed with an amended expiry date of 9 June 2012. However, as it was not possible to serve the appellant with notice that his leave had been curtailed the curtailment was ignored.

20. In the appellant's bundle were three provisional result notification for various ACCA courses – F1, F2 and F3 dated 14 November 2013 and referring to results of exams held at Sanjari International College. The provisional certificates, which were only copies stated that the exams were taken on 11 November 2013 and that these were provisional results that "will be verified and confirmed in your exam status within your ACCA account". There is no other evidence of the appellant having passed any exams and indeed there is no evidence whatsoever of his connection to Sanjari College.

21. The next relevant fact is that St. Albans College sponsorship licence was revoked on 17 July 2013. Thereafter it could only operate as a legacy sponsor for those who were already studying there or taking re-sits. That is dated three months before the appellant made his application. There is

no evidence and it was not claimed that the appellant had studied at St. Albans College.

22. Ms Chopra quite correctly accepted that the appellant could not succeed under the Rules.

23. The question therefore before me is whether or not the appellant's rights under Article 8 of the ECHR were not infringed was not a decision that was open to him or, alternatively that he should have considered a common law duty of fairness which meant that the appellant's appeal should have been allowed.

24. I see no way in which it could be said that the judge before whom it was not argued that the decision was in breach of a common law duty of fairness by the respondent could have concluded that that duty was breached. The PBS Rules are clear, the CAS that was issued indicated that it was a "legacy A" CAS when the appellant would have known that he had not previously studied at the college and the PBS system, which is one which has been drafted to ensure certainty was properly applied. The issue of "common law duty of fairness" is a principle which exists to remedy cases and which the state should be held to act fairly. There was nothing unfair in the decision. Insofar as the college, as is claimed, took the appellant's money for the course when they should not have done so, that is really a matter between the appellant and the college. There is no indication that he sought any recompense from the college. I do not consider that the "common law duty of fairness is one which is engaged in this case.

25. With regard to the issue of the rights of the appellant under Article 8 of the ECHR I note the terms of the determination of the Tribunal in **Nasim**". It is extremely difficult to argue that someone who comes to Britain for a temporary purpose can claim that it is a disproportionate interference with their rights to study here if they do not qualify for leave to remain under the Rules as is clear is the case here.

26. I have considered the appellant's particular circumstances and note the lack of evidence of a coherent programme of studies here let alone evidence of what the appellant was doing firstly when he came to study at Brentford College or indeed his connection with Sanjari College where it appears he sat exams for which he received provisional results. Moreover he does not appear to have studied thereafter. I cannot see how it could be considered that the rights of the appellant were engaged and although I consider that the judge only briefly dealt with the issue of the rights of the appellant under Article 8, I consider that he was correct first of all to consider the Rules and then to consider the issue of exceptionality and reached a conclusion which was entirely open to him and was correct.

27. I therefore find that the decision of the judge dismissing this appeal shall stand as there is no material error of law therein.

Signed Date

Upper Tribunal Judge McGeachy