



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/03871/2014

THE IMMIGRATION ACTS

Heard at Field House

On 23 June 2014

Determination

Promulgated

On 30 June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**MR NASHIT REHMAN
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: none

For the Respondent: Mr L. Tarlow, Specialist Appeals Team

DETERMINATION AND REASONS

1. The appellant appealed to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Camp sitting at Birmingham on 17 March 2014) dismissing his appeal on the papers against the decision by the

respondent to refuse to vary his leave to remain in the United Kingdom as a Tier 4 Student Migrant.

2. Judge Camp dismissed the appeal on the ground that (a) the appellant had no right of appeal, as he had no extant leave when he made his application; and (b) he had not brought forward evidence to show that his Article 8 claim should be considered outside the rules.
3. Permission to appeal on error of law grounds was granted by Judge Plumptre on 13 May 2014 on the ground that it was arguable that the judge had failed to consider common law fairness.
4. The appellant admits that he made his application after his existing leave had expired. On the available evidence there was a gap of about three months between the date when his leave to enter expired (June 2013) and the date when he applied to vary his leave (September 2013). The ground of refusal was that he did not have a valid CAS at the date of decision (January 2014) as his sponsor's licence had been revoked. As the appellant did not have extant leave when he made his application, the respondent was not under a common law duty of fairness to notify the appellant of the revocation of the licence, and the consequential invalidation of his CAS, before making a decision on his application so as to enable him to obtain a new CAS and to vary his application. So the decision of the First-tier Tribunal does not disclose an error of law.
5. Section 104(4) of the 2002 act provides that an appeal under Section 82(1) brought by a person while he is in the United Kingdom shall be treated as abandoned if the appellant leaves the UK.
6. After the appellant was granted permission to appeal he left the UK and returned to his home country of Pakistan. At the hearing before me Mr Tarlow produced evidence of the appellant having left the country, and submitted that his appeal must therefore be treated as abandoned. I agree.

Decision

The decision of the First-tier Tribunal did not contain an error of law, and in any event the appellant has abandoned his appeal against the refusal of further leave to remain by leaving the country.

Anonymity

The First-tier Tribunal made no anonymity order.

Signed

Date

Deputy Upper Tribunal Judge Monson