



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/14789/2014

Appeal Number:

THE IMMIGRATION ACTS

Heard at: Field House
On: 29 August 2014

**Determination
Promulgated
On 9 September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

SRINIVASAN RAJU
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr A Syed-Ali, LG Law Chambers
For the Respondent: Mr S Whitwell, Home Office Presenting
Officer

DETERMINATION AND REASONS

1. This is an appeal by the Appellant, a citizen of India, against the determination of First-tier Tribunal Judge Herwald in which he dismissed the Appellant's appeal against the Secretary of

State's decision to refuse to vary leave to remain as a Tier 4 (General) Student Migrant.

2. The application under appeal was made on 18 January 2014 and was refused by reference to paragraph 245ZX(c), 245ZX(d) and Appendix A paragraphs 116(da) and 116(db) of the Immigration Rules (HC395) on 13 November 2013. The Appellant exercised his right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Herwald on papers on 13 May 2014 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge Page on 3 July 2014 in the following terms

There is a paucity of reasoning in the judge's determination at paragraph 18 to explain why the judge was not persuaded that the appellant met the requirements for leave to be granted on the grounds of his private life in the United Kingdom under paragraph 276ADE. All that is said about this is that the judge was "not persuaded" with no reference as to why. The grounds of appeal complain that the judge's assessment of proportionality was inadequate. This is clearly arguable so permission to appeal is granted on this ground. The judge has set out the case law as to the approach to be taken where there has been a revocation of the sponsor's licence in some detail at paragraphs 10-13 but after that there is only one paragraph (paragraph 14) that makes any reference to the appellant's case. The grounds of appeal argue that the judge gave inadequate consideration to the appellant's case and failed to give due regard to the case law that the judge set out. This ground of appeal may be arguable also.

3. At the hearing before me the Appellant was represented by Mr Syed-Ali who submitted an appeal bundle. Mr Whitwell appeared to represent the Secretary of State.
4. At the outset of the hearing I asked Mr Whitwell whether it was accepted by the Respondent, as asserted by the Appellant in the grounds of appeal to the First-tier Tribunal, that the sponsoring college held Grade A status at the time of the application. The hearing was put back to enable Mr Whitwell to make enquiries but he was not able to ascertain when the sponsor's licence was downgraded from 'A' to 'B'.

Submissions

5. For the Appellant Mr Syed-Ali said that he did not pursue the appeal on Article 8 grounds other than to say that the Appellant having paid for his course ought to get the benefit. He referred to CDS (PBS: "available": Article 8) Brazil [2010] UKUT 00305 (IAC). Dealing with the specific grounds of appeal Mr Syed-Ali referred to paragraph 11 of the determination and said that the Judge was aware of the Respondent's policy to allow 60 days from the date of decision for an applicant to find an alternative

college where a sponsoring college has had its licence revoked. The Appellant asserts that this was the proper course in this case. At the time of his application on 17 January 2014 the sponsoring college held Highly Trusted or 'A' Status. By the time the Respondent made her decision to refuse the application the sponsor's status had been downgraded to Legacy or 'B' status. So far as funds were concerned the source of funds, being a bank loan from Tamilnad Bank, was exactly the same source as that used successfully in the entry clearance application yet the Respondent now resiles from acceptance.

6. For the Respondent Mr Whitwell said that he had not been able to ascertain from the government register when the sponsoring college was downgraded from Highly Trusted to Legacy. He accepted that if the college was downgraded after the application then the decision in this respect was not in accordance with the law. So far as the loan is concerned a copy of the Immigration Rules pertaining at the time of the application was not available. If the Rules allowed a bank loan other than one that was part of an academic or educational loan scheme then it may be arguable that the Judge was wrong in law.
7. For the Appellant Mr Syed-Ali said that this was a personal loan secured on the Appellant's family property. It was not part of an academic or educational loans scheme but was given for the specific purpose of education.
8. I reserved my decision.

Error of law

9. I have considered the papers before me and the oral submissions of both parties very carefully. The issue to be decided by the First-tier Tribunal was a very straightforward one. The Applicant had applied to vary leave to remain as a student. To succeed in his application he needed to show that he held a valid CAS and that he had access to sufficient funds to meet the requirements of the Immigration Rules. The Respondent refused the application on the basis that the CAS was not valid because the sponsor held a Legacy Sponsor or B-Rated licence and the Appellant had not shown that the loan evidencing access to funds was provided as part of an academic or educational loans scheme.
10. In his grounds of appeal to the First-tier Tribunal the Appellant said that when he applied for his extension of leave his sponsor

held a valid sponsor licence and the Respondent's decision to downgrade this licence was a matter over which he had no control. As far as loan was concerned the Appellant said simply that the Respondent was wrong because the letter submitted from Tamilnad Bank specifically stated that the loan was for educational purposes.

11. The appeal came before the First-tier Tribunal on papers. Dealing with the CAS the Judge, alive to the Respondent's policy following Patel (revocation of sponsor licence - fairness) India [2011] UKUT 00211 (IAC) made the following finding at paragraph 17.A).

"The Appellant does not deny that the sponsor holds a B-rated licence, and therefore the CAS could not be treated as valid. Although the Appellant says that he should have been given a chance to change, there is no information before me as to when the sponsorship licence was revoked and, for all I know, it was revoked before the Appellant commenced his series of studies there".

12. In the grounds of appeal to the Upper Tribunal the Appellant asserts that the First-tier Tribunal's finding in this respect was perverse because "without any consideration of the facts" the Judge found that the sponsor held a B-rated licence without giving any consideration to when it was downgraded.
13. In my judgement this ground of appeal has merit. The grounds of appeal very clearly assert that the sponsor held a full licence at the date of application. The Respondent failed to respond to those grounds of appeal and indeed even by the date of the Upper Tribunal hearing was unable to say when the sponsor's licence was downgraded. The finding by the First-tier Judge "*for all I know, it was revoked before the Appellant commenced studies*" is, if not perverse, irrational. Indeed it is not a finding at all rather a failure to make a finding on a matter raised in the grounds that was crucial. In my judgement this is an error of law.
14. As far as the second issue, the bank loan, is concerned this is placed under the heading "proportionality" in the grounds of appeal to the Upper Tribunal. "Proportionality" is not an assertion of an error of law so it would not be possible for the Appellant to succeed on this basis. The essence of this ground of appeal is found in paragraph 2(c) of the grounds. The assertion is simple. The Appellant never claimed that he was to study in the United Kingdom on a scholarship or under a grant. He is a student studying in the UK privately with his private personal funds and therefore there is no need to show that the funds were from an approved scholarship or grant. Mr Syed-Ali adds to this in oral submissions that the very same source of

funds was accepted for the Appellant's entry clearance application so having been acceptable on the one occasion it should continue to be acceptable now. Mr Whitwell did not have a copy of the Immigration Rules pertaining at the time of the application and so was unable to say whether a personal loan for educational purposes met the requirements of the rules. Mr Syed-Ali, who also did not have a copy of the rules pertaining at the time of the application bases the Appellant's case on the fact that it does.

15. In this respect the decision of the First-tier Tribunal is clear at paragraph 17.D). The Appellant relied on a letter of 17 January from Tamilnad bank and the Judge finds that the letter

“does not recite that it is part of a formal educational loan scheme and therefore the appeal must fail on that score”.

If the Judge was correct there can be no error of law.

16. Paragraph 1B(d) of Appendix C of the Immigration Rules, in the version in place at the time of the application under appeal, states as follows in respect of the documentary requirements where an applicant is reliant on a loan

If the applicant is applying as a Tier 4 Migrant, an original loan letter from a financial institution regulated for the purpose of student loans by either the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) or, in the case of overseas accounts, the official regulatory body for the country the institution is in and where the money is held, which is dated no more than 6 months before the date of the application and clearly shows:

- (1) the applicant's name,
- (2) the date of the letter,
- (3) the financial institution's name and logo,
- (4) the money available as a loan,
- (5) for applications for entry clearance, that the loan funds are or will be available to the applicant before he travels to the UK, unless the loan is an academic or student loan from the applicant's country's national government and will be released to the applicant on arrival in the UK,
- (6) there are no conditions placed upon the release of the loan funds to the applicant, other than him making a successful application as a Tier 4 Migrant, and
- (7) the loan is provided by the national government, the state or regional

government or a government sponsored student loan company or is part of an academic or educational loans scheme.

17. The letter submitted by the Appellant dated 17 January 2014 records that the Appellant is *“being sanctioned with an educational loan ... for the purpose of studying at (sic) abroad”*. There are two problems with this letter from the Appellant’s point of view. Firstly whilst referring to an *“educational loan”* the letter does not show that this is part of an educational loans scheme as required by the rules. The Judge did not therefore err in law in finding that this letter did not meet the requirements of the Immigration Rules. Secondly, although this was not the basis upon which the Judge made his decision, the loan is specifically in respect of a B.A, (HONS) Hospitality Management course at the University of West London whereas having completed a pre-sessional English Course at the University of West London the Appellant now proposed to undertake an Extended Diploma in Management at the College of Advanced Studies. The loan was therefore not being put to the use specified.
18. My conclusion is that whereas the Judge erred in law in his failure to make a finding as to the date when the sponsor’s status was downgraded such error was not material to the decision to dismiss the appeal as there was no error of law in his finding that the letter from Tamilnad Bank did not meet the requirements of the Immigration Rules.
19. The Appellant’s appeal is dismissed.

Summary

20. The decision of the First-tier Tribunal did not involve the making of a material error of law. This appeal is dismissed.

Signed:

Date:

**J F W Phillips
Deputy Judge of the Upper Tribunal**