



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/16704/2014

THE IMMIGRATION ACTS

Heard at Field House
On 4 September 2014

Determination Promulgated
On 10 September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NAVDEEP KAUR
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr N Bramble of the Specialist Appeals Team
For the Respondent: Ms H Price of Counsel instructed by Mayfair, solicitors

DETERMINATION AND REASONS

The Respondent

1. The Respondent, Navdeep Kaur (to whom I shall refer as the Applicant) is a citizen of India born on 3 May 1981. On 4 April 2011 she arrived with leave to enter as a

Tier 4 (General) Student migrant expiring on 24 January 2014. On the same day as her leave expired she applied for further leave in the same capacity.

2. The application was supported by a Certificate of Acceptance for Studies (CAS) issued by the College of Excellence on 24 January 2014.

The Decision and Appeal

3. On 25 March 2014 the Respondent (the SSHD) refused the application and decided to remove the Appellant by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. The basis for the SSHD's decision was that the CAS had been issued by a Legacy Sponsor and so was only valid if assigned to a student who was re-sitting or repeating a module in order to complete the course of study which they had already started with the same sponsor. The Appellant's previous course had been for a Post-graduate Diploma in Health & Social Care Management at the London School of Management Education.
4. On 7 April 2014 the Appellant lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended. The grounds refer to a letter issued to the Appellant by the College of Excellence which in turn refers to the SSHD's Tier 4 Policy Guidance of 10/2013 which at page 66 states:-

If you have an application under consideration with the Home Office we will process any application for leave to remain supported by a CAS that your sponsor has assigned before becoming a Legacy Sponsor which has been made but not yet been decided at the point your sponsor has become a Legacy Sponsor.

The First-tier Tribunal Determination

5. The appeal was set for hearing in the First-tier Tribunal on 20 June 2014 at which both parties were represented, the Applicant by Ms Price. The operative part of the determination of Judge of the First-tier Tribunal Steer reads:-

At the outset of the hearing, the representatives advised that it was agreed that the appeal should be allowed outright, as the decision was not in accordance with the law, given the failure by the Respondent to advise the Appellant of the change in status of her college after she had obtained the CAS from that college and to thereby afford her the opportunity to obtain an alternative CAS.

Without any further reasoning the Judge went on to allow the appeal.

6. The SSHD sought permission to appeal on the basis that the Judge had erred in allowing the appeal outright rather than remitting it for a lawful decision to be made. On 17 June 2014 Judge of the First-tier Tribunal J M Holmes granted permission to appeal.

The Upper Tribunal Hearing

7. There was no challenge to the Applicant's claim that the College of Excellence had become a Legacy Sponsor subsequent to the assignment of the relevant CAS to the Applicant and before the Respondent had made a decision on the Applicant's application for further leave. Mr Bramble identified a manuscript note in the SSHD's file prepared by Counsel who had represented the SSHD in the First-tier Tribunal. I was told that although not all of this note easily legible it indicated that it was clear the Applicant fell within the scope of the Policy Guidance referred to by the College and should have been given leave.
8. Even with the benefit of Ms Price's knowledge of what had happened at the First-tier Tribunal hearing, it remained unclear to me from what she said, from what the Judge had written in his Record of Proceedings and in his determination exactly what had or had not been agreed between the parties at the First-tier Tribunal hearing or what the Judge thought the parties were telling him they had agreed.
9. Further, the determination allowed the Applicant's appeal outright but failed to give any reason other than to refer to an agreement between the parties, the terms of which were not articulated in the determination. The consequence is that the SSHD has not been informed why the appeal has been allowed. This amounts to an error of law such that the determination must be set aside: see for instance paragraphs 11 and 12 of *MK (duty to give reasons) [2013] UKUT 641*.
10. Page 66 of the SSHD's Tier 4 Policy Guidance of August 2014 is fairly reflected in the college's letter of 19 May 2014 already referred to. The letter stated that a copy of the then current policy was attached but there was no copy in the Tribunal file. Ms Price sent me a copy of the Policy Guidance of 10/2013 which I find is accurately reflected in the College's letter. The Appellant has shown that her application falls within the scope of the Policy Guidance. In most cases, it would be appropriate simply to find the decision of the SSHD not to be in accordance with the law and leave it for the SSHD to make a lawful decision: see *AG and Others (policies: executive discretions: Tribunal's powers) Kosovo [2007] UKAIT 82*. Given the accepted factual basis and the absence of evidence of any countervailing factors the inevitable result is that the Appellant is entitled to further leave and there is no point in requiring the SSHD to re-consider.

Anonymity

11. There was no request for an anonymity direction or anonymisation and having heard the appeal I find there is no need for such.

DECISION

The determination of the First-tier Tribunal contained a material error of law such that it must be set aside. The following decision is substituted:-

The appeal of the SSHD is dismissed with the effect that the original appeal of the Applicant is allowed.

No order as to anonymity made.

Signed/Official Crest

Date 08. ix. 2014

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal

TO THE RESPONDENT: FEE AWARD

The Applicant's appeal has been allowed and having regard to the grounds upon which it has been allowed, I find it appropriate to make a fee award of £140.

Signed/Official Crest

Dated 08. ix. 2014

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal