



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

Appeal Number: IA/49444/2013

THE IMMIGRATION ACTS

Heard at Field House

On 7 October 2014

Determination

Promulgated

On 10 October 2014

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL G A BLACK

Between

HASSAN MEHMOOD

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

NO ANONYMITY ORDER

Representation:

For the Appellant: Mr Blundell, Counsel

For the Respondent: Mr Kandola, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This matter comes before me to consider whether or not there was a material error of law. The appellant is Hassan Mehmood whose date of birth is 25 August 1988. He is a citizen of Pakistan. He appeals against a determination before First-tier Tribunal (Judge Clarke) promulgated on 9 June 2014 in which she dismissed his appeal against a decision to cancel

leave to remain as a Tier 4 Student under paragraph 321A(1) of the Immigration Rules. The appellant's leave to remain was cancelled by an immigration officer on the grounds that there was a change of circumstances, namely the licence of the college had been revoked (which was accepted) and that the appellant failed to start the course on time and was 6 weeks late, having attended his sister's wedding and delayed his return to the UK. There was an additional issue as to working in excess of permitted hours but this was not relevant to my considerations.

2. The First-tier Tribunal Judge dismissed the appeal notwithstanding that there was no evidence or bundle adduced by the respondent at all. The Tribunal found "precedent facts" were established [7]; that the course of study was due to commence the day after the appellant's sister's wedding and the appellant did not return until 17 November. She concluded that there was a change of circumstances to do with the appellant's actions and not the revocation of the college licence. She concluded that there was no procedural unfairness therefore by the appellant not being given 60 days in which to find another college.

Grounds for permission

3. The grounds for permission argued that there was nothing before the First-tier Tribunal to establish a change of circumstances as to the appellant's absence for six weeks prior to commencing his studies. There was no evidence from the college and no documentation in connection with the leave application from the respondent. There was a failure therefore on the part of the respondent to establish evidence of the original circumstances, which amounted to an error of law.

Permission to appeal

4. Permission was initially refused by First-tier Judge Osborne. The application was renewed before the Upper Tribunal and granted by Upper Tribunal Judge O'Connor who said in his reasons:

"It is arguable that it was not open to the First-tier Tribunal Judge to conclude, on the evidence available to her, that the Secretary of State had demonstrated the existence of the necessary precedent facts required by paragraph 321A(1) of the Immigration Rules."

Submissions

5. In submissions before me this morning Mr Blundell relied on **OR (Bangladesh)[2011] UKUT 166 (IAC)** in which the Upper Tribunal concluded that before any change of circumstances could be established, it was necessary to establish what the original circumstances were and the burden in that regard falls on the respondent.

6. Mr Kandola submits that there was sufficient evidence or information before the Tribunal Judge to establish precedent facts which included the start date, the appellant's absence and the revocation of the college licence. He submits that the revocation was sufficient to amount to a change of circumstances in any event.

Discussion and decision

7. I have decided that there was a material error of law. There was no evidential basis on which the Tribunal could establish what the original circumstances were when the appellant was granted leave to pursue his studies. The burden of proof was clearly on the respondent but no evidence at all was produced at the hearing. There was no evidence at all on which the Tribunal Judge reached her findings and conclusions as to the change of circumstances having regard to what she described as the appellant's own actions. The Tribunal failed to determine the appeal having regard to the change of circumstances of the revocation of the sponsors licence.
8. Accordingly I have decided to set aside that determination.

Remaking the decision

9. There is no challenge to the fact that there was a change of circumstances by the revocation of the college licence. I rely on that change of circumstances and I find that the respondent ought to be granted 60 days leave to the appellant in which to find a new sponsor.

Decision

- 10. There was a material error of law. The determination is set aside.**
- 11. I remit the matter to the Secretary of State for a lawful decision to be made and direct that the appellant is given 60 days' leave in which to find a new sponsor.**

Signed

Date 9.10.10

Deputy Upper Tribunal Judge G A Black

No fee award

No anonymity order made nor requested