



IAC-FH-AR-V1

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

Appeal Number: IA/00842/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 1 September 2015**

**Decision & Reasons Promulgated
On 3 September 2015**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**MUHAMMAD ZUBAIR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Khan, Counsel, instructed by Sheratons Solicitors
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

Background

1. This is an appeal against the decision of Judge of the First-tier Tribunal Wylie who, on 5 February 2015, dismissed the appellant's appeal against a refusal by the Secretary of State to grant him further leave to remain as a Tier 4 (General) Student. The appellant, whose date of birth is 1 October 1990, is a citizen of Pakistan. He entered the United Kingdom on 11 September 2010. On 15 October 2012 he applied for further leave to remain as a Tier 4 (General) Student. That application was to enable him

to study at St. John's College Limited. When he made his application St. John's College had a sponsor licence. The college subsequently lost its licence and, on 15 June 2013, the Secretary of State varied the appellant's leave so that it would expire 60 days hence.

2. On 17 August 2013 the appellant varied his application to enable him to study at Northam College. When his application was made Northam College was an educational institution that held the relevant sponsor licence. Unfortunately for the appellant Northam College, at some time after his variation application was made, lost its sponsor licence. On 2 December 2013 the Secretary of State refused the appellant's variation application and made a decision to remove him from the UK pursuant to Section 47 of the Immigration, Asylum and Nationality Act 2006. Aggrieved with this decision the appellant sought to appeal to the First-tier Tribunal.

Decision of the First-tier Tribunal

3. In her determination the Judge noted that, at the time that the decision was made, the appellant did not have a valid CAS because Northam College had lost its licence. The judge was therefore satisfied that the appellant did not meet the requirements of the Immigration Rules in relation to the accumulation of 30 points under the Points-Based System. The judge very briefly considered Article 8 and found that Article 8 would not be breached should the appellant be removed from the United Kingdom.
4. The judge made no reference to the case of **Patel (Revocation of sponsor licence - fairness) India [2011] UKUT 00211**. This authority from the Upper Tribunal indicates that, in circumstances where, through no fault or involvement of an appellant, a college at which he is studying or proposes to study loses its sponsorship licence after he applies for further leave to study there, then, pursuant to principles of common law fairness, the Secretary of State ought to grant that person a period of 60 days leave to enable him to find another college at which to study. Failure to do so renders the decision unlawful through unfairness.

Grounds of appeal and hearing before the Upper Tribunal

5. The grounds of appeal to the Upper Tribunal contend that the judge failed to consider or apply the authority of **Patel**. I took account of submissions from Mr Clarke representing the Secretary of State. Mr Clarke submitted that the wording and structure of the Secretary of State's Tier 4 policy guidance did not envisage multiple grants of variations of leave of 60 days on subsequent occasions. He submitted there was no case law suggesting the respondent was obliged to give repeated grant of leave to individuals in the appellant's position. Mr Clarke invited me to find that there must be consistency in both the nature of applications and decision-making and that fairness plays both ways. It was, he submitted, not proportionate to

enable an individual in such circumstances to have a further grant of leave so they could find another college.

Discussion

6. I have considered the Tier 4 Sponsor policy guidance provided by Mr Clarke at the hearing (v16.0, valid from 26 November 2013). I can detect nothing in the wording of the guidance that would prevent an applicant in the appellant's circumstances from being granted a subsequent period of leave following an initial grant of 60 days to give him the opportunity to apply to another college. I do not accept that there would be uncertainty in a situation where individuals are able to make further applications after the second college to which they lawfully applied loses its licence. I am satisfied this is likely to be a relatively rare occurrence. Nor can I ascertain any disproportionality to the respondent in granting a further period of leave.
7. I am also satisfied, having regard to the authority of **Patel**, that there is no reason why the principles enunciated in that case ought not to be applied to the current situation. The appellant is entirely blameless as to the reasons why Northam College lost its licence. I am satisfied there is no reason why the appellant should be deprived of the opportunity of applying to a second college simply because he has already been granted a period of 60 days leave following the withdrawal of his first college's licence.
8. I am therefore satisfied that the judge's failure to apply the principles enunciated in the case of **Patel** does disclose a material error of law. I allow the appeal on the basis that the Secretary of State's decision is not in accordance with the law. The effect of this is that the application remains outstanding and it will be remitted back to the Secretary of State to enable her to make a lawful decision.

Notice of Decision

The determination of the First-tier Tribunal does disclose a material error of law. The appeal is allowed to the extent that the appellant's application remains outstanding until a lawful decision is made.

I direct that any fresh decision is not to be made for a period of sixty days from the date of the reasoned decision being transmitted to the parties, in order to give the appellant a reasonably opportunity to vary his application

No anonymity direction is made.



Signed

02 September 2015

Date

Upper Tribunal Judge Blum

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a whole fee award for the following reason. The respondent acted unfairly in failing to give the appellant an opportunity to vary his application following the withdrawal of his college's sponsorship licence.



Signed

02 September 2015

Date

Upper Tribunal Judge Blum