Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/11602/2014

THE IMMIGRATION ACTS

Heard at Field House **Decision & Reasons Promulgated**
On 9 April 2015 **On 20 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GIBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SHERIFF ADEOYE FADAIRO
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr S Walker, Home Office Presenting Officer
For the Respondent: None (Mr Fadairo appeared in person)

DECISION AND REASONS

1. Although this appeal was allowed at the First-tier, and the appellant is the Secretary of State, I will refer to the parties as they were at the First-tier.

2. The appellant's application as a Tier 4 Student, to study for a master of science degree in business economics at the University of Portsmouth, was refused on 21 February 2014. The Confirmation of Acceptance for Studies (CAS) document was accepted, but the application was refused on funds, which turned on the issue of whether the appellant had paid fees to the university of £3,850 before the application was made.

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3. The appeal was allowed by First-tier Tribunal Judge Clough, in a decision promulgated on 28 November 2014. Permission to appeal was granted by First-tier Tribunal Judge Chohan. The application for permission to appeal was on the basis that the judge had erred in law in allowing the appeal under the Immigration Rules when the appellant had admitted that he had forgotten to provide an original receipt for the fees.

4. The appellant appeared in person at the error of law hearing. He indicated that he had started the MSc in business economics in September 2014, and was due to finish in September 2015. He said that the handwritten alteration to the CAS, where the figure of £3,850 had been crossed out and replaced by the figures 0.00, was an alteration made by a lady in the Portsmouth University International Students Office. He had paid all of the fees before he submitted his application.

<u>Error of Law</u>

5. As I indicated at the hearing I have decided that the judge did err in law, in a manner material to the outcome, in taking into account the receipt that the appellant sent in with his appeal form. This was not evidence submitted with the application. In points-based appeals section 85A of the 2002 Act, which was in force at the date of decision, rendered inadmissible any evidence not submitted with the application. This does not appear to have been considered and applied by the judge, who incorrectly directed himself that the receipt was evidence that could be taken into account because it was in existence at the date of decision. This is a confusion with the law applicable in entry clearance appeals.

<u>Remaking</u>

6. There was an examination, with the assistance of Mr Walker, to whom I am grateful, of the correct method for remaking the decision in the appeal. After consideration of various issues Mr Walker agreed that the correct course was for the appeal to be allowed to a limited extent, as not in accordance with the law, to enable the application to be reconsidered.

7. The basis for this sensible agreed position was as follows.

8. Paragraph 13C of Annex C to the Immigration Rules gives two alternatives. The first is that the CAS checking service entry should confirm details of fees already paid. The second is that an original paper receipt should be provided. Although the paper receipt cannot be considered as admissible evidence in the appeal, for the reasons given above, there is an outstanding issue in relation to the CAS checking service.

9. From the refusal letter it is unclear whether the decision maker consulted the CAS checking service. The decision maker did have the CAS which is in the respondent's bundle. On this the handwritten alteration has been made, as described above. This

was, unfortunately, less than clear. What is also unclear is the exact nature of the CAS checking service, and Mr Walker was not able to help on this point. It is presumably a checking service that operates digitally. In any event the alteration on the CAS should have rung some alarm bells about the safety of treating the CAS as indicating that no fees had been paid, rather than that all of them had been paid. The next point of information was on the application form itself, which was before the decision maker. At page 7 of the application form the appellant stated that he had paid £3,850 in fees, and that the evidence that he was providing to show that this amount had been paid was the information on the CAS (not a receipt).

10. Although paragraph 245AA, concerned with evidential flexibility, would not cover a situation where an appellant had simply failed to remember to submit a document, such as a receipt, in this case there was enough to justify the decision maker referring to the CAS checking service entry. As I have said Mr Walker agreed that the failure to do so, given that this was an alternative to the paper receipt within paragraph 13C, was a matter that rendered the decision not in accordance with the law.

11. As I explained to the appellant this means that it is open to him to make any other submissions, and submit any further evidence. The restrictions on the consideration of evidence not submitted with an application does not apply to the Secretary of State. I suggested to the appellant that he should take this decision to the International Students Office at the University of Portsmouth and ask for their assistance in ensuring that the information on the CAS checking service as to the position with his fees is up-to-date. They could also offer assistance in suggesting where and how any further required information could be provided to the correct Home Office caseworker.

12. No issue as to anonymity was raised by either side, and I make no such order. The appellant made no application for a fee award. I have nevertheless considered whether to make a fee award, and have decided, given that the matter remains somewhat unclear, that a fee award is not justified.

Notice of Decision

The decision of the First-tier Tribunal allowing the appeal is set aside.
The decision is remade as follows.
The appeal is allowed to the limited extent that the decision was not in accordance with the law, and the application remains outstanding.

Signed Date

Deputy Upper Tribunal Judge Gibb