



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

Appeal Number: IA/17151/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20<sup>th</sup> March 2015**

**Decision & Reasons  
Promulgated  
On 1<sup>st</sup> April 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR SHER AMIN  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer

For the Respondent: No appearance

**DECISION AND REASONS**

1. The Respondent to this appeal, Mr Amin, is a national of Pakistan whose date of birth is recorded as 2<sup>nd</sup> June 1973. He did not attend the hearing before the First-tier Tribunal although his solicitors did file a bundle of documents. On this occasion there has been no communication at all, either from Mr Amin or his solicitors but I am satisfied from the Upper Tribunal file that proper notice has been served for the purpose of this hearing and in those circumstances, having regard to rule 38 of the

Tribunal Procedure (Upper Tribunal) Rules 2008 I propose to proceed with the hearing.

2. On 26<sup>th</sup> February 2014, Mr Amin made a combined application for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant. He had claimed 30 points under Appendix A of the Immigration Rules for a valid Confirmation of Acceptance for Studies (CAS) but no reference number had been provided with the application. In addition he claimed 10 points for maintenance but as he had not provided a valid CAS the Secretary of State was unable to accept the application, no points were awarded and the application was refused by reference to paragraph 245ZX(c) and (d) of the Immigration Rules with reference to paragraph 115 of Appendix A.
3. Mr Amin appealed. His appeal was heard on 15<sup>th</sup> October 2014 by Judge of the First-tier Tribunal Iqbal sitting at Hatton Cross. Judge Iqbal came to the view that the single issue in the appeal was the missing CAS letter. He was prepared to accept evidence that as at the date of decision, 1<sup>st</sup> April 2014, had the Secretary of State made further enquiry it would have become evident that there was, at that date, a valid CAS. Judge Iqbal had before him a CAS dated 31<sup>st</sup> March 2014. He accepted proof of delivery from Sheffield Post Office and accepted that the document, in its original form, was with the Secretary of State on 3<sup>rd</sup> April 2014. The Judge allowed the appeal on the basis that the decision was not in accordance with the law because in the judge's view the Secretary of State might have taken into consideration that CAS.
4. Not content with the decision, by notice dated 24<sup>th</sup> November 2014 the Secretary of State made application for permission to appeal to the Upper Tribunal.
5. The Secretary of State was granted permission by Judge of the First-tier Tribunal Cruthers on 6<sup>th</sup> January 2015, thus the matter comes before me.
6. It was observed by the Court of Appeal in the case of EK (Ivory Coast) v The Secretary of State for the Home Department [2014] EWCA Civ 1517 at paragraph 28 that:

“The points-based system is intended to simplify the procedure for applying for leave to enter or remain in the United Kingdom in certain classes of case, such as economic migrants and students. This is to enable the Secretary of State to process high volumes of applications in a fair and reasonably expeditious manner, according to clear objective criteria. This is in the interests of all applicants. It also assists applicants to know what evidence they have to submit in support of an application.”
7. By paragraph 116 of Appendix A, a CAS will only be considered to be valid if (a) it was issued no more than 6 months *before* the application was made. In this case it is common ground, it would seem, that the document was issued on 31 March 2014 ie after the application was made. By paragraph 120-SD if the Confirmation of Acceptance for Studies Checking

Service is to be used the requisite details are to be supplied with the application. There was at one time some debate as to whether or not there was a concept of a continuing application. That arose because of the judgment of the Upper Tribunal in the case of Khatel [2013] UKUT 44 (IAC) but that issue was resolved by the Court of Appeal in the case of Raju [2013] EWCA Civ 754. There is no such context of this kind of case. The Rules required the provision of a CAS with the application. Either the CAS was with the application or it was not. In this case it was not and further, the evidence points to it coming into existence after the application of 26 February 2014, was made. It is not in dispute that the CAS was submitted after the application was made as this is stated in the grounds to the First-tier. The Secretary of State was entitled to deal with the matter in the way in which she did.

8. The Secretary of State does have, in certain circumstances, flexibility. I refer to paragraph 245AA, but it is clear that only in certain circumstances will the Secretary of State have regard to evidence which was not served with the application. This is not a case where issues of post-decision evidence arise. This is a case in which the substantive Rule was not met and where at paragraph 6 of the grounds the Secretary of State asserts:

“The First-tier Tribunal should have found that the Rules were not met and dismissed the appeal accordingly”.

That ground forming part of the totality of the grounds is made out.

9. There is only one proper course in this case and that is having found a material error of law to remake the decision such that the appeal to the First-tier Tribunal is dismissed.
10. Mr Amin, has not placed any further matters before me. The issues of Article 8 for example are not raised, no human rights matters are raised and so I proceed on the basis that they are not pursued in line with the guidance in Sarkar [2014] EWCA Civ 195. If I am wrong given the limited evidence and the provisions of s117B of the Nationality, Immigration and Asylum Act 2002 I cannot see how the Appellant could possibly succeed.

### **Decision**

The appeal of the Secretary of State to the Upper Tribunal is allowed. The Decision of the First-tier Tribunal is set aside and remade such that the appeal is dismissed.

**Signed**

**Date 31<sup>st</sup> March 2015**

**Deputy Upper Tribunal Judge Zucker**