Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/17296/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 24 September 2015	**On 2 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MISS TIWALOLA OLAMIDE OLAYODE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Akindele, Solicitor, A & A Solicitors
For the Respondent: Mr L Tarlow, Specialist Appeals Team

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal dismissing her appeal against the decision to refuse to grant her leave to remain in the United Kingdom as a Tier 2 General Migrant, and against the Secretary

of State's concomitant decision to remove her from the UK by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the appellant requires anonymity for these proceedings in the Upper Tribunal.

The Reasons for the Grant of Permission

2. On 15 May 2015 First-tier Tribunal Judge Nicholson gave his reasons for granting the appellant permission to appeal to the Upper Tribunal:

> 2. The appellant applied for leave to remain as a Tier 2 migrant. The judge considered her appeal against that refusal and found that her Certificate of Sponsorship had been withdrawn and thus that she was not entitled to the claimed points.
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> 3. Ground 1 contends that the Certificate of Sponsorship had not been withdrawn. The ground refers to a copy of the certificate at page 44 of the appellant's bundle, which shows the status of the Certificate as "used" and gives an expiry date of 16 February 2014. The appellant's application was received by the respondent on 14 February 2014, two days before the certificate expired, and in those circumstances ground 1 contends that the respondent's guidance at page 46 of the bundle obliged the respondent to change the status from expired/used when considering the application. In the light of this evidence, it is arguable that the judge erred in concluding that the Certificate was withdrawn and in finding that the refusal of the Tier 2 application was in accordance with the law.
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> 4. That, however, is not the end of the matter, because the appellant actually had no right of appeal under section 82(2)(d) of the 2002 Act against the refusal of the Tier 2 application as the refusal did not result in her having no leave to remain – her leave to remain expired 2 days before the application was submitted when she withdrew an earlier appeal. Thus her only right of appeal lay against the decision to remove her.
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> 5. In those circumstances, it is questionable whether ground 1 or any of the other grounds, which essentially challenge the refusal of the Tier 2 application, can have any material bearing on the outcome of the appeal.
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> 6. Nonetheless, I will grant permission on the ground 1 because it is arguable that, if the appellant had been entitled to succeed on her Tier 2 application, that might have some bearing on the issue of proportionality in the context of article 8 (although by the date of the hearing, she had overstayed for more than 28 days for the purposes of paragraph 245HD(p) of the rules). I do not refuse permission on the other grounds.

The Appellant's Material History

3. The appellant is a national of Nigeria, whose date of birth is 11 November 1986. She first arrived in the United Kingdom on 2 October 2005 with valid entry clearance as a student. She remained lawfully in the United Kingdom in the capacity of a student until 29 November 2010, when she was granted leave to remain as a Tier 1 Post-Study Work Migrant until 29 November 2012. On 28 November 2012 she applied for further leave to remain as the unmarried partner of a British national, but her

application was refused on 22 July 2013. She appealed against the refusal, but subsequently withdrew her appeal on 10 February 2014. Throughout this period she was employed by the Care Quality Commission.

4. Following the withdrawal of her appeal, the appellant applied for leave to remain as a Tier 2 Migrant. In her application form, she relied on a certificate of sponsorship assigned to her by the Care Quality Commission on 15 November 2013.

5. The application was made on 14 February 2014, and was refused on 21 March 2014. The reason for refusal was the Secretary of State was not satisfied she had provided a valid certificate of sponsorship reference number. The certificate of sponsorship reference number which she had provided had been withdrawn by her sponsor, and therefore she could not be awarded points for sponsorship.

The Hearing before, and the Decision of, the First-tier Tribunal

6. The appellant's appeal came before Judge Khawar sitting at Hatton Cross in the First-tier Tribunal on 19 November 2014. Both parties were legally represented. The appellant adopted as her evidence-in-chief a witness statement in which she said she had first started working for the Care Quality Commission as an administrator in March 2011. At that time, she was on a salary of £14,800 per annum. She was later promoted to the role of a data analyst, with an annual income of £29,245 per annum. She started this role on 12 August 2013. She had withdrawn her human rights appeal on the advice of her solicitors. After consulting the Home Office, the CQC terminated her employment contract with immediate effect on 17 February 2014, and unfortunately did not renew her certificate of sponsorship while her application was pending due to the advice they received from the Home Office that she did not have a right to work, as her human rights appeal had been withdrawn.

7. Her legal representative submitted that at the date of application she had a perfectly valid certificate of sponsorship (whose expiry date was 16 February 2014) and that the respondent had been wrong to treat the certificate of sponsorship as being withdrawn.

8. The material findings of the judge were at paragraphs 14 to 17 of his subsequent decision, and I reproduce these paragraphs below:

> 14. The Appellant's case is fully particularised in her Grounds of Appeal in which she contends that the Respondent's decision is not in accordance with the law. However she fails to identify the law and the alleged breach thereof. She also contends that the Respondent's decision is unlawful under Section 6 of the Human Rights Act 1998 as it is incompatible with her Convention rights because she believes that her application meets the requirements of the UK laws, and it ought not to have been refused and the Home Office should have 'exercised discretion in the right way' (paragraph 8 of her Grounds of Appeal). Yet again, there is a failure to identify the law which she claims the Respondent has breached. The Appellant also contends that the Respondent's decision is incompatible with Article 8 of the ECHR because it is in breach of her right to respect for private and family life in the United Kingdom. There is no elaboration of the private and family life in the United Kingdom. Finally the

Appellant contends that she is entitled to rely on DS Abdi [1996] and the 'Judicial undertone' following from the decision therein. The Appellant has failed to identify any published policy which the Respondent has allegedly not taken into account.

15. Having considered all evidence and the law and for the reasons set out below I do not find in favour of the Appellant.

16. It is evident from the Chronology set out herein above that two days prior to the Appellant's current application, she withdrew her appeal in relation to the Respondent's Refusal dated 22nd July 2013. The effect of that withdrawal is that the Appellant no longer had any valid leave to remain post 29th November 2012. It is also apparent from correspondence contained in the Appellant's bundle (pages 32 – 40 thereof) that upon being informed the Appellant no longer had a right to work her Sponsor/employer, the Care quality Commission, withdrew the Certificate of Sponsorship. The exact date on which this Certificate of Sponsorship was withdrawn is not apparent from any document submitted either by the Appellant or the Respondent. However there can be no doubt that as at the date of the Respondent's decision the Appellant's Sponsor had withdrawn the Certificate of Sponsorship.

17. Consequently I can only conclude that the Respondent's decision is entirely in accordance with the law and the Immigration Rules. In my judgment, if the Appellant had not withdrawn her appeal relating to the previous refusal but simply submitted her current application at a time when that appeal was still pending, by virtue of Section 3C of the Immigration Act 1971, her current application would have been deemed as being a Variation Application during a period of extant leave by operation of law. As such she would continue to have had a valid permission to undertake work and therefore there would have been no justification for the Appellant's employer to withdraw the Certificate of Sponsorship. However, because the Appellant withdrew her appeal when she did, two days prior to her current application being made, at that time she did not have any valid leave to remain under the Immigration Rules/the law. Consequently the Appellant only has herself and/or her previous solicitors to blame in relation to the circumstances she finds herself in. She has no legitimate complaint in relation to the legality of the Respondent's decision; as noted above, the Appellant's Grounds of Appeal failed to particularise any aspect of her claims made in support of this appeal. Accordingly the Appellant's appeal fails under the Immigration Rules and the Law.

The Hearing in the Upper Tribunal

9. At the hearing before me, I reviewed with the parties the documents that had been before the First-tier Tribunal.

10. The respondent's bundle did not contain a communication from the CQC to the effect that the certificate of sponsorship had been withdrawn. However in the appellant's bundle at pages 41 and following there was a file copy of a printout relating to CQC's sponsorship of the appellant which Mr Tarlow accepted must have passed through the hands of the Home Office. The following information was recorded under the title of "CoS Number and Status": the current CoS status was "expired"; the status date was 17 February 2014; the date the CoS was assigned was

15 November 2013 and the expiry date (by which the CoS needed to be used) was 16 February 2014; the sponsorship had not been withdrawn, but the sponsor asked the reader to note that the appellant was no longer employed by the CQC.

11. On 11 April 2014 the appellant e-mailed the HR department of the CQC requesting to know when her certificate of sponsorship was withdrawn and why. In a letter dated 11 April 2014 the CQC addressed a number of grievance concerns raised by the appellant, including the question of withdrawal of sponsorship by CQC. The writer said that she was aware that the appellant's sponsorship with CQC expired on 16 February 2014. As they had received advice from the UK Border Agency (on 17 February 2014) that confirmed she was no longer eligible to work in the UK, CQC could not continue to employ her. As she was no longer employed, CQC were not in a position to renew her sponsorship. She understood that the appellant had submitted an application for a new visa, but as this had only been received by the Home Office after her visa and sponsorship had expired, the Home Office confirmed that her right to work in the UK had been withdrawn.

12. Mr Akindele referred me to a step-by-step guide for sponsors issued by the respondent. He submitted that the table at page 46 of the appellant's bundle showed that the refusal letter had wrongly characterised the certificate of sponsorship as being withdrawn. It should have been treated as "used" as it had not expired by the date of application, and it had been used before the expiry date to support the appellant's application for leave to remain.

13. On behalf of the Secretary of State, Mr Tarlow accepted that the wrong terminology may have been used, but said it did not make any material difference. By the date of decision the appellant's contract of employment with CQC had been terminated and there was no valid certificate of sponsorship in existence.

Discussion

14. It is clear from the documentary evidence that it is not accurate to characterise the sponsor as having withdrawn the certificate of sponsorship issued to the appellant in November 2013. The relevant sequence of events was as follows: the certificate of sponsorship expired on 16 February 2014; the Home Office received the Tier 2 application (made on 14 February 2014) on 17 February 2014 and immediately contacted the CQC to inform them that the appellant was not entitled to work for them on account of her recent immigration history. As a result of this communication, the CQC immediately terminated the appellant's contract of employment, and did not renew the certificate of sponsorship.

15. Because the appellant had "used" the certificate of sponsorship to make an application for leave to remain two days before the certificate expired, in the normal course of events her certificate of sponsorship would still have fallen to be treated as valid at the date of decision. In the normal course of events it would not have been necessary for the sponsor to renew the certificate.

16. But the effect of the appellant's withdrawal of her human rights appeal was to render her presence in the country unlawful from the date of the refusal of the earlier

application in July 2013; and thus it retrospectively invalidated the certificate of sponsorship which had been assigned to her in November 2013 on the (retrospectively) mistaken understanding that she was permitted to work. Moreover and in any event, by the date of decision the CQC had terminated the appellant's employment and had made it abundantly clear both to her and to the respondent that they were no longer willing or able to sponsor her.

17. Accordingly, the judge did not materially err in law. By terminating the appellant's contract, the sponsor had *effectively* withdrawn its sponsorship of her. In any event, the appellant did not have a valid certificate of sponsorship from 17 February 2014 onwards. Although the certificate of sponsorship checking service did not show on that date that her sponsorship had been withdrawn, it did show that she was no longer employed by the sponsor and that the previous certificate of sponsorship had expired.

18. Accordingly, the appellant was not entitled to succeed on her Tier 2 application, and the judge below rightly dismissed her appeal against the refusal of her Tier 2 application. The judge gave adequate reasons in paragraphs [18] to [23] for dismissing the appellant's alternative claim under Article 8 ECHR, and the grounds of appeal to the Upper Tribunal do not in terms challenge these findings.

Decision

The decision of the First-tier Tribunal dismissing the appellant's appeal on all grounds raised did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Monson