IAC-TH-WYL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/18553/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 24 February 2015	**On 2 March 2015**

Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR SANGAMKUMAR PATEL
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr T Wilding
For the Respondent: Mr P Saini

DECISION AND REASONS

1. Although the Secretary of State is the appellant it is more convenient to refer to the parties as they were in the First-tier Tribunal such that Mr Patel is hereafter referred to as the Appellant and the Secretary of State for the Home Department as the respondent.

2. The appellant is a citizen of India who was born on 26 February 1991. On 3 April 2014 a decision was made to refuse to vary his leave and to remove him by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. He had applied on 28 November 2013

for leave to remain as a Tier 4 (General) Student Migrant under the points-based system. The reason for refusal was that he had claimed 30 points under Appendix A of the Immigration Rules for a Confirmation of Acceptance for Studies (CAS) but the respondent was not satisfied that the appellant had a valid CAS and therefore he was not entitled to the points claimed. The Secretary of State was not so satisfied because the reference number submitted with the application had been withdrawn by the sponsor.

3. The appellant, whether by himself or with the help of unnamed representatives, appealed that decision to the First-tier Tribunal. The grounds of appeal are in the most general terms and make no reference whatever to the respondent not having acted in accordance with its own policy in a situation where a sponsor licence has been revoked or withdrawn by the Secretary of State and the applicant is both unaware of the revocation and not party to any reason why the licence has been revoked. In essence in those circumstances the Secretary of State should afford an applicant a reasonable opportunity to vary the application by identifying a new sponsor before the original application was determined.

4. This was an appeal dealt with "on the papers". The appellant filed a statement in support of his appeal and for the first time in that statement at paragraph 7 wrote:

> "(7) I also have a strong argument that Home Office should inform me or give us 60 days to find another sponsor if previous sponsor withdraw the sponsorship."

The judge set out in the determination that he was provided by the respondent with a paper copy of the CAS relied upon. It appears that he assumed that this was the printout of the CAS as it was when it was checked on 3 April 2014 and that this was supposedly the document that showed that the CAS had been withdrawn. In fact the document before him did not show any such withdrawal. Subsequently it transpired that the incorrect CAS had been put before the judge and the later document – only produced following the decision having been made in favour of the appellant – showed that the CAS was indeed withdrawn and that the appellant was not therefore entitled to the 30 points that he needed to meet the requirements of the Immigration Rules.

5. The respondent produced the evidence with the application seeking leave to appeal to the Upper Tribunal. On a renewed application such permission was granted.

6. On any view it cannot have been the fault of the judge that relevant evidence was not put before him. However, the fact is that at the time the application was decided and unbeknown to the appellant, the CAS had been withdrawn and he could therefore not meet the requirements of the Rules. Perhaps of just as much importance is the fact that the original grounds of appeal should have made reference to the respondent not

having acted in accordance with her own policy. She should have allowed the appellant a period of time to find a substitute sponsor. The application should not have been determined until after that period had expired. The judge made no reference to it and again can be forgiven for not doing so in that the policy issue did not appear in the grounds of appeal. The appellant did refer to it in his witness statement that was before the judge but no doubt the judge did not feel he needed to deal with that aspect because he allowed the appeal on the CAS point to which I have already referred.

7. Before me both representatives agreed that the decision of the judge should not stand although they were uncertain as how best to proceed to enable the unsatisfactory situation to be remedied.

8. Having considered the matter and having heard submissions from both parties I have decided that there is a material error of law in the judge's decision because there is accepted evidence that at the time the application was decided the appellant was not entitled to the 30 points that he claimed and to which the judge found he was entitled. I therefore set aside the decision of the First-tier Judge.

9. I thereafter proceeded straightaway to re-make the decision.

Re-making the Decision

10. The case of **Patel (Revocation of sponsor licence – fairness) India [2011] UKUT 00211 (IAC)** sets out the law and procedure to be followed where such a situation has arisen. There is no suggestion as far as I am aware that the appellant is anything other than innocent of any practice that led to loss of the sponsorship status and there is no suggestion either that he was aware of the fact of such loss of status prior to the refusal of his application.

11. What should have happened therefore is that the appellant should have been afforded an opportunity to vary his application by giving him a reasonable time in which to find a substitute college on which to base his application for an extension of stay to obtain the relevant qualification. I do not think it is in issue that the Home Office policy is to afford 60 days for such an application to be made. That procedure has not been followed. The result is that I am only able to allow the appeal to the extent that I find that the decision is not in accordance with the law. No lawful decision has been made on the application and it remains to be determined by the Secretary of State and leave to remain that was originally granted continues uninterrupted in the meantime as per s.3C of the Immigration Act 1971.

12. I was not addressed on the point but following **Patel** I direct **that a fresh decision is not to be made for a period of 60 days from the date of this reasoned decision being transmitted to the parties to enable the appellant to obtain a fresh sponsorship letter, if he is able to**

do so, which sponsorship letter must be current and this would then enable his existing application to be varied to include study at the place set out in the new sponsorship letter. Should the applicant fail to respond to the invitation to provide such a sponsorship letter then there would have been no breach of the duty of fairness to him and the respondent doubtless would then make a decision on the application.

Decision

13. For the above reasons **I re-make the decision by allowing the appeal to the limited extent that the original decision was not made in accordance with the law and I give the direction set out in paragraph 12 set out above**.

14. I see no need for an anonymity direction in the circumstances of this case and therefore do not make one.

Signed Date **24 February 2015**

Upper Tribunal Judge Pinkerton