



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/19278/2014

THE IMMIGRATION ACTS

Heard at Field House
On 9 April 2015

Decision & Reasons Promulgated
On 20 April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

NIMMY EASO MARKSON
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms D Qureshi of Counsel instructed through Direct Access
For the Respondent: Mr L Tarlow of the Specialist Appeals Team

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of India, born on 14 December 1984. On 6 June 2015 he arrived with leave to enter as a Tier 4 (General) Student Migrant which on 10 December 2013 the Respondent curtailed with effect from 8 February 2014 on the

grounds that the Appellant had ceased studying at the institution which had issued his Certificate of Acceptance for Studies (CAS). In time, on 8 February 2013 the Appellant made a further application for leave in the same capacity which on 4 April 2014 the Respondent refused.

The Original Decision

2. The Respondent refused the application for further leave on the sole ground that at the date of the decision, 4 April 2014, the CAS Tracking Service did not disclose that any CAS had been assigned to the Appellant. The application was therefore refused under paragraph 245ZX(c) of the Immigration Rules and para.117 of Appendix A.
3. On 28 April 2014 the Appellant lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended referring to the issue of a CAS to him by London Metropolitan College (LMC) and attaching a letter from LMC confirming that a valid CAS was extant and assigned to him as at 4 April 2014.

The First-tier Tribunal's Decision

4. On 30 September 2014 the Appellant wrote to the First-tier Tribunal with a witness statement and a bundle of documents stating he would not be able to attend the hearing because he was unwell and could not afford to pay for a representative.
5. The appeal was decided by Judge of the First-tier Tribunal Seifert on the papers and on 8 December 2014 her decision dismissing the appeal under the Immigration Rules was promulgated.
6. The Appellant sought permission to appeal, referring to the letter of 25 April 2014 which he had submitted before the First-tier Tribunal consideration of his appeal and asserting that the decision contained an error of law because it had failed to take this letter into account.
7. On 29 January 2015 Judge of the First-tier Tribunal Pooler granted permission to appeal on the basis it was arguable there was no evidence to support the Respondent's assertion about absence of any CAS and the Judge had not taken into account other evidence which I take to include the letter of 25 April from LMC confirming the continuing validity of the Appellant's CAS.

The Upper Tribunal Hearing

8. The Appellant attended the hearing for the limited purpose of which he had instructed Ms Qureshi. Because of the havoc caused by the recent underground electrical fire in the Kingsway area Mr Tarlow had some papers but did not have the Respondent's file. He had received the Appellant's bundle which had been filed with the Upper Tribunal on 11 March 2015.

9. I explained the procedure and the purpose of the hearing and that the initial task was to ascertain whether or not there was a material error of law in the Judge's decision. Following a conversation between the representatives and myself it was agreed that the hearing, to begin with, should proceed by way of my setting out what I considered to be the chronology of events and I requested that the representatives interrupt me if they thought I was in error. In the event I set out what I considered to be the chronology and neither representative saw the need to intervene.
10. The chronology is as follows:-
 - 8 February 2014. Following receipt of the Respondent's decision to curtail his then leave, the Appellant made further application for student leave supported by a CAS from London College of Business Management and Information Technology.
 - 26 February 2014. LMC issued a CAS to the Appellant for a one year course.
 - 26 February 2014. The Appellant wrote to the Respondent with the balance of documentation which he had omitted from his 8 February application and which the Respondent had requested. In that letter, the Appellant sought to vary his application to enable him to study at LMC. With the letter he submitted the CAS issued by LMC.
 - 4 April 2014. The Respondent makes a CAS check. There is no evidence in the Tribunal file as to the nature of the check other than the Respondent's assertion the result was wholly negative.
 - 4 April 2014. The Respondent refused the Appellant's application for lack of a valid CAS.
 - 25 April 2014. LMC confirmed the Appellant had an extant CAS as at 4 April 2014.
 - 28 April 2014. The Appellant lodges notice of appeal.
 - 8 December 2014. The First-tier Tribunal dismiss the Appellant's appeal.
11. I pointed out that the First-tier Tribunal had at paragraph 18 of its decision accepted the Appellant had sent the CAS issued by LMC to the Respondent with his letter of 26 February 2014. At paragraph 20 of the Judge's decision she had referred to the Respondent's assertion that a check on 4 April 2014 failed to disclose a valid CAS for the Appellant and on that basis dismissed the appeal at paragraph 22 of her decision without reference to the letter of 25 April 2014 from LMC which was before her.
12. I said to the representatives that unless they wished to submit to the contrary, I proposed to find there was a material error of law in the Judge's decision because she had failed to take account of material evidence, namely LMC's letter of 25 April 2014

and that error was sufficiently material to set aside her decision. I proposed to re-make the decision allowing the appeal. It appeared that the Appellant's letter of 26 February 2014 as varying the application for further leave by way of reference to studies at a different college had not reached or been noted by the caseworker. There had been no challenge to LMC's letter of 25 April 2014. Consequently I considered it appropriate to re-make the decision allowing the appeal.

13. Neither representative had any submissions to make or objection to proceeding on that basis.

Conclusion

14. Having regard to the chronology outlined and agreed by the parties and for the reasons already stated I find the decision of the First-tier Tribunal contains a material error of law such that its conclusion should be set aside but its findings of fact in particular at paragraphs 17 and 18 should stand and I re-make the decision allowing the appeal under the Immigration Rules.

Anonymity

15. There was no request for an anonymity direction and I see no reason to make one.

NOTICE OF DECISION

The decision of the First-tier Tribunal contained an error of law and is set aside. The decision is re-made and the appeal of the Appellant is allowed.

Anonymity direction not made.

Signed/Official Crest

Date: 16. iv. 2015

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal

TO THE RESPONDENT: FEE AWARD

The appeal has been allowed and so I have considered whether to make a fee award. In the circumstances outlined in the body of the decision, I find it appropriate to make a fee award of £140.

Signed/Official Crest

Date: 16. iv. 2015

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal