



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/19544/2014

THE IMMIGRATION ACTS

Heard at Field House
On 11 March 2015

Determination Promulgated
On 12 March 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Secretary of State for the Home Department

Appellant

and

Mr Ravinder

[No anonymity direction made]

Claimant

Representation:

For the claimant: Not represented

For the respondent: Ms A Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the appeal of the Secretary of State against the determination of First-tier Tribunal Judge Perry promulgated 13.11.14, allowing the claimant's appeal against the decision of the Secretary of State to refuse his Tier 4 (General) Student migrant application for further leave to remain. The Judge heard the appeal on 6.11.14.
2. First-tier Tribunal Judge McClure granted permission to appeal on 31.12.14.
3. Thus the matter came before me on 11.3.15 as an appeal in the Upper Tribunal.

Error of Law

4. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Perry should be set aside.
5. Something has gone seriously wrong with the appeal process. It stems from the fact that there are two different decisions by the Secretary of State.
6. The first is a decision dated 20.2.14 refusing an application made on 14.11.12, because the claimant's CAS was not valid when checked and although he was given 60 days to submit a new one, he failed to do so.
7. The second is a decision dated 11.4.14 refusing a further application made on 12.2.14, because it appeared to the Secretary of State that the claimant had undertaken a further course of study in breach of a condition of his leave imposed by section 50 of the Borders, Citizenship and Immigration Act 2009.
8. Only the second decision was appealed by the claimant, as confirmed by the reference number on the notice of appeal.
9. However, Judge Perry purported to deal with both, addressing the earlier appeal at §14 and §15 of the decision. Insofar as the judge purported to deal with the first decision of the Secretary of State, there was no jurisdiction to do so, since it has not been appealed.
10. The grounds of application for permission to appeal address only the judge's treatment of the first decision of the Secretary of State. It follows that there are no valid grounds of appeal against the judge's findings and conclusions in respect of the second decision, the only one subject of an appeal.
11. It follows that in the absence of any valid grounds of appeal, the Secretary of State's appeal must fail as there is no challenge to the judge's decision in respect of the second decision of April 2014.
12. It also follows that the first decision refusing further leave to remain and including a decision to remove the claimant has not been appealed and stands.
13. This matter needs careful attention by the Secretary of State to resolve the two conflicting situations, the extant refusal and removal, and the allowing of the appeal against the second decision by Judge Perry.

Conclusions:

14. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal in respect of the appeal against the refusal decision dated 11.4.15 stands.



Signed:

Date: 11 March 2015

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: There is no change in the decision of the First-tier Tribunal, which refused to make a fee award.



Signed:

Date: 11 March 2015

Deputy Upper Tribunal Judge Pickup