



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

Appeal Number: IA/33477/2014

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 9 April 2015**

**Decision Promulgated
On 22 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

**ALI ARSHAD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Barton instructed by Sabz Solicitors

For the Respondent: Mr G Harrison Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Horvath promulgated on 31 October 2014 which dismissed the Appellant's appeal against a refusal of leave to remain as a Tier 4 Student and make directions for his

removal under section 47 of the Immigration, Asylum and Nationality Act 2006 on all grounds .

Background

3. The Appellant was born on 25 November 1984 and is a national of Pakistan.
4. On 14 October 2013 the Appellant applied for leave to remain as a Tier 4 (General) Student Migrant under the Points Based System.
5. On 12 August 2014 the Secretary of State refused the Appellant's application by reference to paragraph 245ZX(c) with reference to paragraph 116(c) of Appendix A and paragraph 245ZX(d) of the Immigration Rules. The refusal letter gave a number of reasons:
 - (a) The Appellant could not be awarded the 30 points claimed for his Confirmation of Acceptance of Studies (CAS) because the reference number submitted with the application was withdrawn by the Sponsor.
 - (b) As the Appellant did not have a valid CAS he could not be awarded the points claimed for maintenance.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal on the basis that he had a valid CAS at the time of his application but it became invalid when the college license was suspended and that he should have been given the time to obtain a new CAS. The Appellant elected to have the appeal dealt with on the papers.
7. First-tier Tribunal Judge Horvath ("the Judge") dismissed the appeal against the Respondent's decision. The Judge found :
 - (a) The Appellant submitted a CAS with his application that was assigned on 12 October 2013 and valid until 13 April 2014.
 - (b) At the date of the decision the CAS had already expired and was not renewed.
 - (c) The reason it had not been renewed was 'probably because, as stated by the appellant, the college sponsor's licence had been suspended by the Home Office.'
 - (d) The Appellant therefore did not have a valid CAS and the decision to refuse the application was correct.
 - (e) No points were awarded for maintenance because the Appellant did not have a valid CAS.
 - (f) The Appellant was entitled to seek an alternative college to continue with his studies and make a fresh application to the Home Office within 60 days. There is no evidence that he did so after finding out that the licence had been suspended.

- (g) In the absence of a valid CAS he could not be awarded the points for maintenance.
 - (h) The Appellant did not meet the requirements of Appendix FM or Paragraph 276 ADE.
 - (i) There was no merit in the Appellant's claim that his rights under Article 8 were engaged.
8. Grounds of appeal were lodged arguing that :
- (a) The Appellant had paid the fees and produced a valid CAS at the time of the application.
 - (b) The Respondent took 10 months to make a decision.
 - (c) When the Respondent found that the CAS was no longer valid they should have allowed the Appellant 60 days to find a new college.
 - (d) The findings under Article 8 were irrational.
9. On 12 December 2014 First-tier Tribunal Judge White gave permission to appeal stating that there was no merit in the challenge to the Article 8 findings but it was arguable that the Judge had erred by failing to have sufficient regard for the guidelines given in Patel (revocation of sponsor licence - fairness) [2011] UKUT to the effect that where a sponsor licence had been revoked by the Secretary of State during an application for variation of leave and the applicant is both unaware of the revocation and not party to any reason why the licence has been revoked, the Secretary of State should afford an applicant a reasonable opportunity to vary an application by identifying a new sponsor before the application was determined.
10. At the hearing I heard submissions from Ms Barton on behalf of the Appellant that:
- (a) The Respondent did not look at the Appellant's application for 10 months.
 - (b) At the time of the application the CAS was valid but it expired during the 10 months that passed before the Respondent made a decision.
 - (c) The Appellant was unaware that the CAS had been withdrawn or suspended so there was an arguable case for allowing him 60 days to find a new CAS.
11. On behalf of the Respondent Mr Harrison submitted that :
- (a) He relied on the Rule 24 notice.
 - (b) The basis on which the refusal letter was written was that the CAS was withdrawn by the Sponsor.
 - (c) The Appellant suggests that the colleges licence was suspended which caused the CAS to be invalid but he produced no evidence to that effect.

Finding on Material Error

12. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
13. The Appellant made an application dated 14 October 2013 for leave to remain as a Tier 4 student submitting a CAS in respect of a course at Milburn College of Professional Studies valid from 12 October 2013 to 13 April 2014.
14. The refusal letter which was dated 12 August 2014 stated explicitly that the CAS in question was **withdrawn** by the Sponsor and therefore the points claimed for a valid CAS and for maintenance could not be awarded.
15. The Appellant elected to have the appeal dealt with on the papers claiming that the college licence was suspended by the Respondent and although not explicit presumably was suggesting that this led to his CAS being invalid. The Appellant chose not to attend court to give evidence challenging the Respondent's case that the CAS had been withdrawn by the College rather than simply lapsing or indeed being invalidated by having its licence suspended. He was also given the opportunity to make written submissions to the court but produced no documentary evidence that the college had its licence suspended and no documentary evidence to counter the Respondent's case that the college had withdrawn his CAS.
16. While the Judge was slightly confused in his approach to the possibility of the Appellant being given 60 days to find a new sponsor in paragraph 15 apparently suggesting that this could be given after the decision was made rather than before there was no evidence before the Judge that this was such a case in any event and indeed there was no concession by the Respondent that this was the case: the Respondent's position was that the CAS was withdrawn.
17. I am satisfied therefore that the Judge was entitled to conclude that the Appellant could not be awarded the points claimed for a valid CAS or maintenance. This appeal is not the opportunity for the Appellant to argue the case and adduce the evidence that he should have done before the First-tier tribunal. I am satisfied that on the basis of the evidence before the Judge there was no basis for concluding that there had been any procedural unfairness in how the Appellant's application had been dealt with.

CONCLUSION

18. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

19. **The appeal is dismissed.**

Signed

Date 20/4/2015

Deputy Upper Tribunal Judge Birrell