



IAC-AH-PC-V1

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

Appeal Number: IA/34451/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1<sup>st</sup> October 2015**

**Decision & Reasons Promulgated  
On 21<sup>st</sup> October 2015**

**Before**

**THE HONOURABLE LORD BURNS  
DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR GURPREET SINGH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Mr Tony Melvin (HOPO)

**DECISION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge D Ross, promulgated on 21<sup>st</sup> April 2015, following a hearing at Hatton Cross on 9<sup>th</sup> April 2015. In the determination, the judge dismissed the appeal of Mr Gurpreet Singh. The Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before us.

**The Appellant**

2. The Appellant is a male, a citizen of India, who was born on 8<sup>th</sup> April 1991. He appealed against the decision of the Respondent dated 21<sup>st</sup> August 2014, for leave to remain in the UK as a Tier 4 (General) Student Migrant.

### **The Appellant's Claim**

3. The Appellant's claim is that his Confirmation of Acceptance for Studies (CAS) shows the sponsoring college to be the London College of Business Management and Information Technology. His course began on 17<sup>th</sup> February 2014. This was expected to end on 2<sup>nd</sup> June 2015. However, the CAS showed that the sponsorship had subsequently been withdrawn, and expired on 14<sup>th</sup> August 2014. He states that he was informed by a Ms Vardajan that the licence of the college had been suspended on 27<sup>th</sup> August 2014. It was revoked on 5<sup>th</sup> January 2015.
4. The Appellant's case is that the policy of the Home Office is that where the licence of the Sponsor has been withdrawn, and as a result of this the student has lost out on the sponsorship, the Home Office gives the student 60 days in order to find another Sponsor, and this has been confirmed in **Thakur [2011] UKUT 151** and in **Patel (India) [2011] UKUT 211**. He, accordingly, claims 30 points under Appendix A of the Immigration Rules with respect to his application on the basis that a 60 day period of grace would have enabled him to find another college with a sponsorship.

### **The Judge's Findings**

5. The judge rejected the Appellant's claim. She held that the burden was on the Appellant to show that he complies with the requirements for leave to remain as a Tier 4 (General) Student (see paragraph 6) as she held that "the evidence shows that in fact the college must have withdrawn the sponsorship themselves, since the date when the check was made was prior to the time when the college was suspended" (paragraph 8). She observed how the skeleton argument before her observed that the Appellant should have been given 60 days to find another college. However, "this concession in policy, and case law only applies to cases where the college's licence has been suspended by the Home Office" (paragraph 10). The appeal could not succeed under the Rules.
6. That left the question of whether the appeal could succeed under human rights law. Consideration was given to Article 8 of the ECHR, but the judge held that, "there is no evidence to suggest that the Appellant who had lived in India until he came to the UK two years ago would have any difficulties in reintegrating" (paragraph 11). The Appellant could also not succeed outside the Immigration Rules (paragraph 12).

### **Grounds of Application**

7. In the grounds of application, the Appellant reiterated the same points made before Judge Ross. On 25<sup>th</sup> June 2015, permission to appeal was granted by the First-tier Tribunal.

## **The Hearing**

8. At the hearing before us on 1<sup>st</sup> October 2015, the Appellant was not in attendance. Nor was there anyone else in attendance on his behalf. He had no legal representation. The appeal before Judge Ross had been determined “on the papers”. The appeal before us was meant to be an oral hearing but a letter from Malik & Co (Solicitors & Advocates) dated 1<sup>st</sup> October 2015 purported to inform the Tribunal that they had been instructed not to attend the hearing with the appeal to be decided “on the papers” again.

## **Decision**

9. We are satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that we should set aside the decision and remake the decision (see Section 12(2) of TCEA 2007). Our reasons are as follows.
10. First, the Appellant applied for further leave as a Tier 4 Student on 15<sup>th</sup> February 2014. Yet, on 21<sup>st</sup> August 2014 a CAS check showed that the CAS relied on in the Appellant’s application had been withdrawn. His application fell for refusal.
11. Second, this suggests that the issue of the withdrawal of the CAS is an issue, not between the Appellant and the Secretary of State, but between the Appellant and the revoking college where he attended.
12. Third, this means that the Secretary of State is not acting contrary to policy, which policy applies only in circumstances where the Secretary of State has herself revoked a licence, thereby causing possible prejudice to the Appellant, with the result that a period of 60 days grace is give in these circumstances to an applicant to enable him or her to find another college. This does not apply here.
13. Finally, the case law establishes that there is no issue of “unfairness” to be determined in the Appellant’s favour. In **EK (Ivory Coast) [2014] EWCA Civ 1517** it was held that,

“The essence of the CAS element within the PBS is that the Secretary of State relies on a check on certification by approved colleges, and does not have to investigate further. It is inherent in the scheme that an applicant takes the risk of administrative error on the part of a college” (see paragraph 33).

It was also held that the remedy for an Appellant in such a situation is that,

“The applicant may have a contractual right of recourse against the college. The fact that there is scope for applicants to seek protection against administrative errors by choosing a college with a good reputation and checking the contractual position before enrolling is of some relevance to the fair balance to be struck between the public interest in the due

operation of the PBS regime and the interests of an individual who is detrimentally affected by it” (paragraph 34).

All of this places the onus upon the applicant. In the instant case, the issue is of no concern to the Respondent Secretary of State. There is no error of law. There is no unfairness.

**Notice of Decision**

There is no material error of law in the original judge’s decision. The determination shall stand.

No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

21<sup>st</sup> October 2015