



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

Appeal Number: IA/34927/2014

**THE IMMIGRATION ACTS**

**Heard at Centre City Tower, Birmingham  
On 15<sup>th</sup> May 2015**

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

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR MUHAMMAD ALI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr R Sharif (Solicitor)

For the Respondent: Mr N Smart (HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Mathews, promulgated on 20<sup>th</sup> November 2014, following a hearing at Stoke-on-Trent on 6<sup>th</sup> November 2014. In the determination, the judge allowed the appeal of Muhammad Ali. The Respondent Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a male, a citizen of Pakistan, who was born on 29<sup>th</sup> July 1991. He appeals against the decision of the Respondent Secretary of State dated 20<sup>th</sup> August 2014, rejecting the Appellant's application for leave to remain in the UK as a Tier 4 (General) Student Migrant under the points-based system.

## **The Appellant's Claim**

3. The Appellant's claim is that he entered the UK lawfully on 6<sup>th</sup> October 2011. He had leave to remain as a student until 21<sup>st</sup> June 2014. On 16<sup>th</sup> June 2014, he made his application, including with it a CAS from the Midlands Academy of Business and Technology, for the study of an extended diploma in business management. However, his college told him to await the results of his application, and only then learnt subsequently that the CAS had been withdrawn when he received his reasons for refusal on 20<sup>th</sup> August 2014. He has in the meantime contacted alternative colleges but has been told that they will not consider an application from him without a letter from the Respondent Secretary of State extending his leave for a period to allow him to find an alternative course provider.

## **The Judge's Findings**

4. The judge observed that, although the CAS had been withdrawn, "there is no evidence that the withdrawal was in any way linked to any adverse behaviour of the Appellant", so that, "I find that the Appellant is not at fault in relation to the withdrawal" (paragraph 14). The Judge also observed that there was a policy of the Respondent Secretary of State to allow a further 60 day period to an Appellant whose college's licence had been revoked, in order to enable such a person to find an alternative, "in the event of a CAS becoming invalid" (paragraph 15).
5. The judge went on to hold that the Appellant had not had the policy applied to him because "the Respondent has not written to the Appellant prior to the reasons for refusal". The Home Office Presenting Officer, Miss Alford, had not disputed this fact, and that the Appellant had not been told of the CAS withdrawal prior to the reasons for refusal, so that he did not enjoy the 60 day period of grace set in the Respondent's policy. (Paragraph 16).
6. The judge allowed the appeal.

## **Grounds of Application**

7. The grounds of application state that the judge misdirected herself because the so called "60 day policy" operated by the Home Office only applied in a situation where the Sponsor's licence had been revoked by the Secretary of State. In this case, however, the CAS had been withdrawn by the college itself, and this was a matter between the college and the Appellant student, rather than have anything to do with the Secretary of State having revoked the licence of the sponsoring institution.

8. On 14<sup>th</sup> January 2015, permission to appeal was granted on this basis.

### **Submissions**

9. At the hearing before me on 15<sup>th</sup> May 2015, Mr Smart, appearing on behalf of the Respondent Secretary of State, suggested that he had taken time to speak with Mr Sharif, who appeared on behalf of the Appellant, and it appeared that there was a dispute as to the precise chronology of facts in this matter. Mr Smart submitted that, although the Appellant's sponsoring institution's licence had been revoked, this had been done only after the college had already withdrawn the Appellant's CAS, because this was a college which was under surveillance by the Secretary of State, with a large number of students who were being monitored for non-attendance, and where there appeared to be a degree of abuse, which did eventually result in the college's licence being revoked. The college was aware it was under surveillance, and it may itself have therefore withdrawn the CAS of the Appellant in order to protect itself. Although the refusal letter confirms on 20<sup>th</sup> August 2014 that the college's licence has been revoked, its licence had already been suspended on 24<sup>th</sup> June 2014, the effect of which is to retain intact the CAS so as to enable the affected students to continue studying, but the college then withdrew the Appellant's CAS on 30<sup>th</sup> June 2014.
10. Second, Mr Smart submitted that there was credence to the proposition that the college was already contemplating the withdrawal of the CAS long before the licence of the college was revoked by the Secretary of State. This is clear from the document in the Respondent's bundle "CAS details" which contains a statement at the top of the page of "Warning - the Sponsor's licence is revoked". Underneath this heading is a subheading of "CAS number and status". This goes on to show that the current CAS status of the Appellant, at the time of the making of the decision by the Secretary of State to revoke the licence, was one which was described as "withdrawn". The date of this state of affairs was "30<sup>th</sup> June 2014".
11. Third, Mr Smart had himself taken the trouble to write an e-mail to Roxanna Cram, the compliance manager, at UK Visas and Immigration, Home Office. In this e-mail, he had asked on 14<sup>th</sup> May 2015, to confirm the circumstances in which the CAS was withdrawn. The reply from Roxanna Cram was that, "I can confirm that the student was withdrawn sponsorship by the college, not by UKVI, if we take action on a CAS as a result of revocation it is marked as 'cancelled'".
12. For his part, Mr Sharif submitted that he could do no better than to reply upon his Rule 24 reply (at pages 1 to 3 of the bundle). He said that the chronology was clear that on 24<sup>th</sup> June 2014, the licence of the college was suspended by UKVI. Four days after that, the college withdrew the Appellant's CAS on 30<sup>th</sup> June 2014. The UKVI had a list of students at the college that they were concerned about as abusing the visas that had been granted to them, but the present applicant, Mr Muhammad Ali, was not one of them. The revocation of the licence came first, because the suspension had already come into effect on 24<sup>th</sup> June 2014, and the withdrawal of the CAS happened afterwards. Second, there was clear evidence that the withdrawal by the

college of the CAS did not occur first, from page 105 of the Appellant's bundle of 6<sup>th</sup> May 2015.

13. This shows that on 18<sup>th</sup> August 2014, the Appellant is making inquiries of the college himself in terms that, "Hi Fatma, can you please tell me the current status and situation of college my visa is still in Home Office haven't received any reply so is the college back on list or not??".
14. The reply from Fatma is,

"Hi Muhammad, the college licence is still suspended but our current students continue their studies. We are expecting a reply from Home Office very soon. I can understand that you are worried, but the best thing to do is to carry on your studies. They will probably not process your application until they make a decision about our licence".
15. Following this, on 28<sup>th</sup> August 2014, the Appellant writes again to Fatma to ask, "Can you please now tell me the current status of college please". Fatma replies to this in terms, "Hi Muhammad, we are very sorry that the college's licence was revoked and subsequently the college had to be closed down a week ago on 22<sup>nd</sup> August. If you have further inquiries please contact Mr Ahmed ...".
16. It is, of course, not clear from this that the Appellant was attending the college at the time that he was making inquiries. Mr Sharif submitted that he was and there is no evidence to the contrary that he was not.
17. But Mr Sharif's case was that the e-mails provide clear evidence of a concerned applicant who is inquiring of his college about the status of the college with respect to the Home Office, and he is being assured that, although their licence is suspended, their students continue their studies, and the advice is that he also continues to do so. There is no suggestion in any of these e-mails that the Appellant's CAS has been withdrawn. On the contrary, he has been told to continue with his studies at the college.
18. In reply, Mr Smart submitted that the e-mails raise far more questions than the answer because it is not clear what the Appellant is doing, and at one stage Fatma is asking of the Appellant to provide her with his "student ID number" because she does not know who she is speaking to.

### **No Error of Law**

19. I am satisfied that the making of the decision by the judge does not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. It is not the function of this Tribunal to make a finding of fact in circumstances where those findings have already been made by an original fact-finding Tribunal, unless it can first be demonstrated that there is an error of law.

20. There is obviously a divergence of opinion, backed up by documentary evidence from both sides, in the submissions of both Mr Sharif and Mr Smart. Mr Sharif states that the e-mails of 18<sup>th</sup> and 28<sup>th</sup> August make it quite clear that the Appellant was actively seeking clarification from his own college about the position of the college *vis-à-vis* the UKVI, and he was most assuredly told that he should continue attending college, which could only be correct if his CAS was intact.
21. Mr Smart, on the other hand, submits that his own research and inquiry with Roxanna Cram, a day before the hearing, confirms that the CAS did not have an entry on it of “cancelled” which would be the case, if the cancellation had happened through the UKVI.
22. What is clear, however, is that the judge’s own determination of the facts, on the basis of the evidence as heard by the judge, is that, “there is no evidence that the withdrawal was in any way linked to any adverse behaviour of the Appellant. I find that the Appellant is not at fault in relation to the withdrawal” (paragraph 14). The judge was clear that, “the Appellant had not been told of the CAS withdrawal prior to the reasons for refusal” (paragraph 16), and nothing has transpired today that suggests that this is not correct. On the evidence before the judge, the judge found that the revocation took place without the Appellant having been informed of the applicable policy allowing him 60 days’ period of grace. That was a finding that was open to the judge.

**Notice of Decision**

23. There is no material error of law in the original judge’s decision. The determination shall stand.
24. No anonymity order is made.

Signed

Dated

Deputy Upper Tribunal Judge Juss

20<sup>th</sup> May 2015