



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/40200/2014

THE IMMIGRATION ACTS

Heard at Bradford
On 22nd June 2015

Decision & Reasons Promulgated
On 3rd July 2015

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

MR AKMAL HUSSAIN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant Akmal Hussain born 15th October 1988 is a citizen of Pakistan. He applied for leave to remain in the UK as a Tier 4 (General) Student Migrant under the Points Based System and this was refused by the Respondent on 23rd September 2014.
2. The Appellant entered the UK as a student in March 2011 and was thereafter granted a renewed student visa valid until 30th January 2014. He followed this with his Tier 4 application and it is that application which was refused by the Respondent.

3. The Appellant appealed against the Respondent's decision and his appeal came before Judge Wilson on 29th December 2014. The Appellant attended the hearing accompanied by a Mackenzie friend. The Judge took oral evidence from the Appellant, considered the documentary evidence before him and in a thorough and detailed determination dismissed his appeal.
4. The central issue before the Judge revolved around whether at the date of decision, the Appellant had achieved the 30 points required under Appendix A with reference to paragraph 245ZX(c) with reference to paragraph 116(c) of the Immigration Rules (attributes).
5. The Judge found that the Appellant could not meet the attributes requirements because he did not have a valid Confirmation of Acceptance for Studies (CAS). This was because the Appellant's college sponsor had withdrawn the Appellant's CAS. Thus the Judge found the Appellant did not meet the requirements for the attributes and dismissed the appeal.
6. The Appellant sought and was granted permission to appeal. The grounds seeking permission are set out in the FtT's grant and are reproduced here as follows;

"The unrepresented appellant's grounds are that:

- (a) the Judge erred in his construction of the Policy Guidance v.10/13 as §40 of the Guidance states that "Where your CAS has been withdrawn or cancelled, the same procedures apply as where a CAS becomes invalid";*
- (b) the Judge should have allowed the appeal given that the respondent did not follow her own published guidance i.e. she issued the refusal notice without delaying the refusal for 60 days and without writing to the appellant informing him of the date by which he should provide a new CAS;*
- (c) the appellant made no admissions as to the validity of his CAS;*
- (d) there is a legitimate expectation that the application would be dealt with in a timely manner;*
- (e) the Judge misapplied EK (Ivory Coast) v SSHD [2014] EWCA Civ 1517."*

In granting permission the FtT said;

"The purported admission in [10] merely indicates that at the date of hearing the appellant did not have a valid CAS, not that his CAS was invalid at the date of application (16.01.2014) or decision (23.09.2014). It is clear from the "CAS Details" produced by the respondent that the CAS was assigned on 14 January 2014 and expired on 15 July 2014, and was thus expired and/or withdrawn prior to the date of decision on 23 September 2014. Consequently, it is arguable that the appellant has been the victim of delay, particularly as the respondent's refusal letter gives no other reason for it having been withdrawn."

Thus the matter comes before the Upper Tribunal.

UT Hearing/Error of Law

7. The Appellant did not attend the hearing which was set down at Bradford on 22nd June 2015. I was satisfied that notice of the hearing had been properly served upon

him at his last registered address. No message or other communication was relayed to the Tribunal explaining his non appearance. In the circumstances I saw no reason not to proceed with the hearing forthwith.

8. Mrs Pettersen on behalf of the Respondent made submissions. In short her submissions amounted to saying that the decision of the FtT was a clear reasoned one and that the Judge had properly directed himself. She added that Judge Wilson had clearly grasped the point on why this Appellant's case was not on all fours with *EK (Ivory Coast) v SSHD* [2014] EWCA Civ 1517. The grant of permission was incorrect. The point being that this is not a case where the college licence has been withdrawn; it is a case that the Appellant's licence has been withdrawn by the college. There is evidence in the documents that the withdrawal of the CAS was made on 9th July 2014 (Annex D) and that is a week before 15th July 2014 expiry date of the CAS. There has been no delay.
9. Mrs Pettersen further submitted that the grounds granting permission are wrong in implying that the Respondent was at fault for her refusal letter not providing a reason for the CAS being withdrawn. That is a matter for the college; not for the Secretary of State. The simple fact is that the college withdrew the CAS before it expired and thus the Appellant could not meet the Immigration Rules.

Consideration

10. I find merit in Mrs Pettersen's submissions. The Appellant has not taken the opportunity to pursue his claim. Judge Wilson in a clear and thorough determination makes a finding which deals with the issue of delay in [10]. He goes on to set out fully in [11] the lack of interest shown by the Appellant in engaging or finding out why the CAS was withdrawn. After making clear findings that the Appellant could not meet the requirements of the Immigration Rules the Judge went on, possibility unnecessarily, to see if the Appellant's claim was one which provided good grounds for settling his appeal outside the Rules. He found that any application made outside the Rules had no merit.

Decision

11. For the foregoing reasons the decision of Judge Wilson contains no error of law. The determination shall stand. This appeal is dismissed.

No anonymity direction is made

Signature

Judge of the Upper Tribunal

Dated

Fee Award

I have dismissed the appeal and therefore there can be no fee award.

Signature

Dated