IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/41518/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28 October 2015	**On 29 October 2015**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

ZAFRAN RASHID
(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 T Melvin, Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
No anonymity order was made by the First-tier Tribunal. I find that no particular issues arise on the facts of this case that give rise to the need for a direction. For this reason no anonymity direction is made.

DECISION AND REASONS

1. The Appellant, Mr Zafran Rashid, is a citizen of Pakistan. He appeals against the decision of the Secretary of State dated 7 October 2013

refusing to vary his leave to remain as a student and giving him notice of removal to Pakistan. The decision was based originally on the fact that this would result in further leave exceeding the maximum permitted for study below degree level. He was later granted leave and notice of appeal was then given against a subsequent decision dated 29 September 2014 responding to an application made on 29 June 2014.

2. The grounds of refusal were based on the lack of a CAS and for lack of maintenance in consequence of that. The appeal was dismissed by First-tier Tribunal Judge Kimnell in a decision promulgated on 13 May 2015 ("the Decision"). The Appellant did not attend that hearing. Solicitors instructed for that hearing indicated that they were without instructions and could not therefore proceed.

3. The Judge found at paragraph 11 of the Decision that whichever decision it was that the Appellant wished to appeal the burden was on him to establish on the balance of probabilities that he met the requirements of the Rules and no evidence had been submitted. Therefore the appeal should be dismissed because the Appellant failed to discharge the burden upon him.

4. It is not clear what grounds were provided with the Appellant's notice of appeal against the Decision but I have assumed for the purposes of this hearing that those were the original grounds which is consistent with the grant of permission.

5. The Appellant asserts that he produced the relevant documents and that the Secretary of State could and should have sought documents if those were not produced. He also relied on case law in support of a proposition that the Section 47 decision to remove was not in accordance with the law.

6. Permission to appeal was granted on 15 July 2015 on the basis that it was arguable that the Judge failed to consider the grounds asserting that the Appellant had provided a CAS and that the Secretary of State could and should have sought it if it was missing. The Appellant did not attend the hearing before me. I am satisfied that he was given notice of the hearing to the address given in the notice of appeal. No communication has been received from him. No application for an adjournment has been made. In the circumstances I considered it to be in the interests of justice to continue with the hearing.

7. Dealing with the points made in the original grounds of appeal, on the basis that those were the grounds before me, insofar as an issue was raised in relation to the Section 47 decision, the decision of the Secretary of State was made on 29 September 2014. That postdates the changes made to that section in consequence of the judgment in **Ahmadi v Secretary of State [2013] EWCA Civ 512**. The decision to remove was therefore not unlawful. There is therefore no issue in that regard.

8. In relation to missing documents, a CAS is not a document in itself but is a reference number which is subject to checking based on the information in the application. The application itself notes that the Appellant did not have a CAS and there was therefore no error in the Judge finding that the Appellant had not discharged the burden of proof for that reason.

9. Mr Melvin submitted before me that the onus is on the Appellant to ensure that documents are produced and it is not for the Secretary of State to deal with omissions in the application. In relation to paragraph 245AA Mr Melvin submits and I accept that this paragraph is not intended to remedy the omission of required documents as paragraph 245AA(c) makes clear. What paragraph 245AA is designed for is to deal with missing documents in a sequence or documents which are not in the right format or which are perhaps copies as opposed to originals. It is not to provide for the lack of a specified document such as a CAS.

10. Although the reasoning given in the Judge's decision could have been fuller the outcome discloses no error of law. Any error in the reasoning is not material since the appeal permits of no other outcome than a dismissal on the facts of this case. I am therefore not satisfied that the First-Tier Tribunal Decision involved the making of a material error of law and I uphold the Decision.

Notice of Decision

The First-Tier Tribunal decision did not involve the making of a material error on a point of law.

I do not set aside the decision.

Signed  Dated 28 October 2015

Upper Tribunal Judge Smith