Upper Tribunal
(Immigration and Asylum Chamber)   **Appeal Number: IA/45777/2014**

THE IMMIGRATION ACTS

Heard at Field House, London   **Decision and Reasons Promulgated**
On 8 October 2015   **On 27 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

HARPREET SINGH BIRDI

<u>Appellant</u>

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

<u>Respondent</u>

Representation:
For the appellant: in person
For the respondent: Mr N Bramble, Home Office Presenting Officer

<u>DECISION AND REASONS</u>

1.   The appellant, a national of India, appealed to the First-tier Tribunal against a decision made by the respondent on 30 October 2014 to refuse his application for leave to remain in the UK as a Tier 2 (General) Migrant. Judge of the First-tier Tribunal Britton dismissed the appeal and the appellant now appeals with permission to this Tribunal.

2.   The issue in this appeal is the allocation of the job description code in the Certificate of Sponsorship (COS). The background is that the appellant entered the UK on 28 December 2011 as a Tier 4 (General) Student Migrant until 15 October 2014. He made the present application on 8 October 2014 for further leave to remain as a Tier 2 (General) Migrant based on his proposed employment with the sponsor, the Books and Periodicals Agency. According to the application form the job title is 'Sales and IT Development'. The job title on the COS is 'Sales, IT & Business Development'. The gross annual salary stated on the application form and the COS is £24,000. The COS describes the job type as '2133' 'IT specialist managers'. The Reasons for Refusal letter states that the respondent awarded the appellant 0 points for appropriate salary as the COS states that the prospective employment most closely corresponds to occupation code 2133 on the Codes of Practice (specified under Appendix Judge of the Immigration Rules) which stipulates that the acceptable rate of pay for that employment is £25,000 for a new entrant. The application was therefore refused because the prospective salary is not at or above the minimum rate as specified in the cores of practice.

3.   The First-tier Tribunal Judge found that, although the job title of the appellant's proposed employment does not mention the word 'manager', the job description does state that the appellant must have 'the ability manage staff' and that the appellant would therefore be working in a managerial role and the respondent had therefore been right to place the appellant's job in the occupational code for an IT manager. He found that the appellant's proposed salary was not sufficient to meet the requirements of that occupational code.

4.   The appellant sought permission to appeal on the grounds that the Judge failed to understand that the Home Office case worker validated the COS and inserted the SOC code 2133. It is contended that the case worker should have contacted the appellant and the sponsor to advise that the COS was invalid. The appellant contends that the Judge misread the job description which states that the ability to manage staff is a desirable rather than an essential requirement. It is contended that the letters before the Judge showed that the sponsor considered that the occupational code should have been 3545 or 3131 both of which have a starting salary of £24,000. The appellant contends that he did not have a fair hearing. Permission to appeal was granted by First-tier Tribunal Judge Holmes on the basis that it is arguable that Judge Britton did not engage with the appellant's case that there was procedural unfairness.

5.   At the hearing before me Mr Birdi referred to a letter dated 22 September 2014 from the sponsor to the Home Office in response to an email dated 17 September 2014 in relation to a sponsor licence. The letter says that the vacant position is that of 'Sales, information technology and business development' and set out the job description. He submitted that the sponsor did not insert a code in the application as he did not want to make a mistake and that the code allocated by the Home Office relates to an IT specialist which does not correspond with the job title and job description put forward by the sponsor.

He submitted that the case worker had already contacted the sponsor by email on 17 September and that they should have contacted the appellant or the sponsor again if the issue was not clear. He submitted that the First-tier Tribunal Judge was wrong in accepting that code 2133 is right as he accepted that the appellant's role is that of a manager without realising that this is one of the desirable criteria. He submitted that the Judge did not go through all of the codes.

6.   Mr Bramble submitted that the Tribunal is the wrong forum for making an allegation that the respondent took the wrong approach to dealing with the application, he submitted that the appellant should have made these allegations by way of Judicial Review. I asked Mr Bramble if there was any policy or guidance covering this situation but he said that he did not have a copy of the relevant guidance applicable at that time. Mr Bramble submitted that the Judge did properly set out the appellant's case and that he engaged with the issues before him. He submitted that the Judge engaged with the competing factors and took note of the appellant's case. He submitted that the decision maker made the decision based on the COS and that the appellant had not established that the sponsor did not insert the code. He submitted that the Judge reached a perfectly reasoned decision.

7.   Mr Birdi responded by submitting he does not know where the code inserted in the COS came from. He submitted that if the sponsor had wanted the appellant to be employed as an IT specialist under code 2133 they would have paid him the required £25,000 salary.

Error of Law

8.   The letters submitted by the appellant from the director of the sponsor company dated 20 January 2015 and the Company secretary dated 25 January 2015 both state that the sponsor did not insert the SOC code 2133 which appears on the COS. In his letter the Company Secretary outlines the correspondence between the company and the Sponsor Casework Operations Unit and says that he did not understand how an invalid COS (ie one where the salary This evidence was before the First-tier Tribunal Judge along with the appellant's own evidence in the grounds of appeal to the First-tier Tribunal. There was therefore an issue before the First-tier Tribunal Judge as to procedural fairness. The Judge identified this issue at paragraph 5 where he said that the appellant had contended in his grounds of appeal that the immigration officer had placed the employment under the wrong code.

9.   The Judge purports to deal with the issues in the appeal at paragraph 12 where he concluded that the appellant's proposed employment did come within one of the job titles mentioned under the code 2133. In so doing he does not appear to have taken account of the letters from the company secretary and director of the sponsor company which indicate the contrary. The First-tier Tribunal Judge made no findings as to the appellant's claim that the code was

not inserted by the sponsor but by the case worker. Accordingly I conclude that the First-tier Tribunal Judge failed to engage fully with the issue of procedural fairness. In these circumstances I set aside the decision of the First-tier Tribunal Judge and remake the decision.

Remaking the decision

10.   According to the documents before me the appellant was issued with a new COS for Business Development manager (SOC 3545) on 20 April 2015. However I do not take account of that in remaking the decision.

11.   I suggested to the parties, who had no objection, that if I found an error of law in this decision it would be appropriate to return the decision to the Secretary of State in light of the procedural issues raised.

12.   The appellant and sponsor say that the COS was issued by the Sponsor Casework Operations Unit. Mr Bramble submitted that it was his understanding that the COS was assigned by the employer. It appears from the letter from Sponsor Casework Operations Unit to the sponsor dated 24 September 2014 that the sponsor was to set up a Sponsorship Management System (SMS) user account to assign a COS to a worker and then the certificate is approved by the Home Office.

13.   The invalid COS ends with the 'migrant caseworker user id' which suggests that a Home Office case worker completed or approved the COS. It appears from the SOC codes before me that the job description put forward by the sponsor in this case differs significantly from the example job tasks set out under code 2133, which applied to IT specialist managers. It is difficult to understand why the Casework Operations Unit would issue an invalid COS with a conflicting code and salary. The appellant and his sponsor assert that this is what happened and there is nothing from the Home Office apart from Mr Bramble's assertion to the contrary. The conflict between the code, the job description and the salary which led to the COS being declared invalid is at odds with the appellant's evidence and with the tone of the correspondence with the Sponsor Casework Operations Unit prior to the decision. I conclude that there is sufficient evidence from the appellant and the sponsor to suggest that a caseworker inserted an SOC code.

14.   I conclude on the evidence before me that in these circumstances the Sponsor Casework Operations Unit should have considered the provisions paragraph 245AA of the Immigration Rules on the basis that the sponsor had submitted a document (the COS) which did not contain all of the specified information (the SOC code) and should have considered contacting the appellant or the sponsor to request the missing information.

15.   In these circumstances I conclude that the decision of 30 October 2014 is not in accordance with the law and that the application for leave to remain

therefore remains outstanding before the Secretary of State for consideration of the exercise of discretion under paragraph 245AA.

Conclusion:

The making of the decision of the First-tier Tribunal did involve the making of a material error on a point of law.

I remake the decision by allowing it to the extent that the application remains outstanding before the Secretary of State to make a lawful decision.

Signed   Date: 23 November 2015

A Grimes
Deputy Judge of the Upper Tribunal