IAC-FH-NL-V2

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/50513/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 March 2015	**On 13 May 2015**

Before

THE HONOURABLE MR JUSTICE COLLINS
DEPUTY UPPER TRIBUNAL JUDGE FRANCES

Between

MR IQBAL HOSSAIN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Shaikh, Counsel instructed by PGA Solicitors LLP
For the Respondent: Mr S Kandola, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal with leave from the decision of Judge Clarke dismissing the appellant's appeal against the refusal of the Secretary of State to grant him leave to remain based upon a Tier 4 application to remain as a student.

2. The appellant had been given leave to enter as a student and had undertaken a course at a college successfully and we gather had received

a diploma. However he desired to undertake a further course which would, assuming he was successful, produce a higher level diploma which would be of real value to him in what he wanted to do with his life in Bangladesh. Unfortunately he made his application on 28 June 2013 which was the final day of his leave to remain. If he left it any longer of course he would have been an overstayer and would have deprived himself of any right of appeal in-country if it had been refused. Unfortunately, at that time and there is no doubt about this, he did not have a necessary document which was a CAS. That document is one which is required to be provided by paragraph 115A of Appendix A to the Rules. We look at it in its present form because there is no material difference between that and what was required at the relevant time because of course these Rules are amended relatively regularly. What that provides is that in order to obtain points for a Confirmation of Acceptance for Studies the applicant must provide a valid CAS reference number.

3. One then has to turn to paragraph 116 and that provides: "A CAS will only be considered to be valid if (a) it was issued no more than six months before the application is made". That presupposes clearly in our view that a valid CAS must be in existence when the application is made because it presupposes that is the situation and merely indicates that it must be not more than six months old. There would have been of course nothing against the appellant arranging for his future before and, if necessary, well before the period of his leave expired. Unfortunately as we say he left it to the last moment and then did not have the CAS in existence. As it happens his application was to a particular college for a course due to start in July but it transpired that that was not possible. We gather that that was cancelled and he had to submit and did submit a fresh CAS in relation to a course commencing in September 2013 and the complaint that he has made and what has led to leave to appeal was that the Secretary of State failed to consider the service of and the existence of a valid CAS before the decision was made in November 2013.

4. Section 3C of the Immigration Act 1971 provides, when read with sub-Section 4, that in relation to an application for further leave to remain the variation of such an application can be made. Obviously any such variation has to be made before the decision in the application is reached and one can well see the sense behind that because it would on the face of it not be sensible and not be fair to refuse leave to someone who shows before the decision is made that actually he qualifies in all respects for the particular decision. However, Parliament in the Rules has decided that in a number of situations there is a need for particular documentation to be provided before or at the time such an application is made. If that requirement is clear from the provision of the Rules, then it has to be applied. We have been referred to a decision of the Court of Appeal in **Raju & Others v Secretary of State for the Home Department [2013] EWCA Civ 754**. That case concerned appeals which required points to be applied in order to qualify under what was then the Tier 1 (Post-Study) provisions of the Rules and there was a table, table 10, which Appendix A contained and one of the requirements to give the necessary

points was that the applicant made the application for entry clearance or leave to remain within twelve months of obtaining the relevant qualification. Now in that case what had happened putting it broadly was that the applicants in question (respondents before the Court of Appeal) had not been able to produce the relevant qualification at the time they made the application but they said that they were aware that that qualification was going to be given and indeed it was in due course given and the Tribunal accepted that that was sufficient to enable their appeal to succeed. However the Court of Appeal decided that the Rules requirement meant that it was necessary that the relevant qualification existed at the time that the application was made, albeit the basis of the Tribunal's decision under appeal was that this was a continuing application. The wording of the Rule was in the view of the Court of Appeal determinative and if the Rule made it clear that a particular document had to be produced or had to be in existence at the time of the application. If it was not there could not be a subsequent production.

5. We have also been referred to 245AA in the Appendix which deals with documents not submitted with applications. We do not think it is necessary to go into that because there are no doubt interesting arguments which may have to be considered in subsequent cases but it is as we say unnecessary for the purposes of this decision because it is quite plain in our judgment that the effect of paragraph 116 is that the CAS must exist at the time that the application is made and thus this case falls directly within the approach that the Court of Appeal has considered to be correct in the **Raju** case.

6. Accordingly we do not accept the argument which was forecast in the grant of leave to appeal that the application should have been decided on the basis of the new CAS and study at the new college as at the date of variation. Regrettably, and we do express regret because it is difficult to see that this is essentially a fair approach to matters. The fact that the appellant had the necessary documentation before the decision was made does not in the circumstances avail him. Accordingly we must dismiss this appeal.

Notice of Decision

The appeal is dismissed under the Immigration Rules.

No anonymity direction is made.

Signed Dated: **4 March 2015**

Mr Justice Collins