



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA012242015

THE IMMIGRATION ACTS

Heard at Field House
On 17th February 2016

Decision Promulgated
On 8th June 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

MD AHAMED SHARIF
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr E Tufan (Presenting Officer)

DECISION AND REASONS

1. This appeal arises from the appeal of Md Ahamed Sharif, a citizen of Bangladesh born 19 July 1980, against the decision of 16 December 2014 to refuse his application for further leave to remain as a student. The appeal having been

dismissed by the First-tier Tribunal he now appeals to the Upper Tribunal with permission.

2. He was originally granted leave to enter as a Tier 4 student from 14 January 2010 until 17 February 2011, his leave being extended until 28 June 2014 in that category. His application for further leave to remain to study for a Level 6 Diploma in Management at Sanjari International College from 9 July 2014 until 30 December 2015 was refused because it was believed that he had overstayed in the United Kingdom for more than 28 days, his leave having expired on 28 June 2014 and his application being made on 21 August 2014; additionally an unacceptable CAS reference number had been submitted, and so he could not satisfy the requirement of Appendix A to hold a valid Certificate of Acceptance for Studies (CAS).
3. Grounds of appeal alleged that the Respondent had miscalculated the Appellant's date of application, which had been made online on 27 June 2014, the relevant application fee being taken by the Home Office that very day: thus pursuant to Immigration Rule 34G(iv), the date of application was that on which it was submitted online. The Appellant's Sponsor's licence had been revoked before he was assigned a CAS: his legal representatives had sought suspension of the decision making process whilst he secured a CAS, but his application was refused without regard to that request. The decision was therefore contrary to the principles of common law fairness identified in decisions such as *Thakur* and *Patel*.
4. His witness statement set out that in order to enrol with Sanjani College he had needed to obtain appropriate evidence of his English language proficiency and to pay the first year of tuition fees of £2,500; the process of raising those funds and registering for the test meant he had to submit his application without a CAS. All places to sit for the test were taken up. He became very anxious and lacked funds to go elsewhere, having now paid his deposit. By the time he had raised funds to study at a different college his application had been refused.
5. Dismissing the appeal on 18 June 2015, the First-tier Tribunal noted that it was now agreed that the decision letter had erred in its allegation that the Appellant had applied after his leave's expiry; however the appeal was doomed to fail without a valid CAS, and it was not suggested that the decision amounted to a disproportionate interference with his human rights.
6. Grounds of appeal submitted that the First-tier Tribunal had erred in law in overlooking the Appellant's explanation for his difficulties in supplying a CAS.
7. On 12 June 2015 Judge Bruce granted permission to appeal on the grounds that the First-tier Tribunal had arguably erred in law in overlooking the Respondent's ostensible failure to implement their usual policy to give sixty days' grace for an

applicant to find an alternative Sponsor where their original college had lost its licence.

8. There was no appearance before me on the Appellant's behalf, but absent an explanation for that, and given that I do not consider that the interests of justice require that he be represented, the grounds of appeal apparently being comprehensive, I considered it appropriate to determine the appeal. Mr Tufan submitted that given no CAS had been submitted, the Home Office policy to give an opportunity to find an alternative Sponsor was not in play, and the appeal had therefore been appropriately dismissed.

Findings and reasons

9. The first ground of appeal asserts that the Appellant's explanation for failing to put forward a CAS was overlooked.
10. The relevant Home Office Guidance around the time of the Appellant's application in relation to applications for leave to remain under the Tier 4 Student category sets out:

"Where the applicant was assigned a CAS by the sponsor before they were removed from the sponsor register, the applicant can apply to extend their leave. ...

2. Where the application does not meet the requirements, refuse it.

3. Where it does meet the requirements, put it on hold. ...

5. If the student's application has been held and the sponsor's licence is revoked, and the student has been a bona fide student and did not participate in the practices which led to the revocation, the options for action depend on the leave that they have:

If they still have at least 60 days permission to stay remaining, you must curtail their leave so that it will expire once the period of 60 days has run out. During this 60 days they can seek a new CAS from a different sponsor and either vary their application, make a new application or leave the UK. If their permission to stay runs out whilst they are waiting for a decision on their application you must delay the refusal of their application for 60 days to allow them to seek a new CAS from a different sponsor and vary their leave."

11. It is clear that the Appellant did not have a CAS at the time he made his application, and so he does not meet the gateway requirements of the policy. Of course the content of Home Office policy is not necessarily the only arbiter of fairness: as shown by *Doody* [1993] UKHL 8 fairness has to be assessed having regard to the requirements of the case in hand.
12. For the majority of the Court of Appeal in *EK (Ivory Coast)* [2014] EWCA Civ 1517, Sales LJ stated, at [38], that whereas in general fairness did not necessarily require an applicant for leave to be advised of matters of which he was unaware before a decision was made in reliance upon them, nevertheless there might well be unfairness where "there had been a change of position of which the Secretary of State was aware, and

indeed which she had brought about, in circumstances in which the students were not themselves at fault in any way, but had been caught out by action taken by the Secretary of State in relation to which they had had no opportunity to protect themselves". Where though "the general unfairness which the Appellant has suffered ... is the result of actions and omissions by" a Sponsor [25], there is no claim for unfairness resulting from the subsequent decision making of the Secretary of State.

13. Whatever misfortune the Appellant may have suffered lies at the door of the College which disappointed him, and is not a matter for which the Secretary of State bears any responsibility.

14. No Human Rights Convention ground has been pursued.

Decision:

The decision of the First-tier Tribunal did not contain a material error of law.
The appeal is dismissed.

A handwritten signature in black ink, appearing to read 'MAS', with a large, sweeping flourish underneath.

Signed:
Deputy Upper Tribunal Judge Symes

Date: 22 February 2016