



(IMMIGRATION AND ASYLUM CHAMBER)

UPPER TRIBUNAL

APPEAL NUMBER: IA/08824/2015

THE IMMIGRATION ACTS

HEARD AT FIELD HOUSE

DECISION & REASONS

PROMULGATED

ON 4 JULY 2016

ON 22 JULY 2016

Before

Deputy Upper Tribunal Judge Mailer

Between

MR MUHAMMAD MONIS VOHRA
(NO ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr P Turner, counsel (instructed by MR Solicitors (Larkshall Rd)

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Pakistan, born on 11 August 1991. His appeal against the decision of the respondent dated 5 February 2014, refusing him leave to remain in the UK as a Tier 4 (General) student, was dismissed by the First-tier Tribunal Judge in a decision promulgated on 26 October 2015.
2. Neither party attended the appeal hearing before the First-tier Tribunal Judge on 9 October 2015.

3. The Judge found at [12] that on the basis of the evidence before her, the appellant did not have limited leave to enter or remain in the UK when his application was made and accordingly, he could not rely on the 'dicta' in Patel (Revocation of sponsor licence – Fairness) India [2011] UKUT 00211 (IAC). The appeal was accordingly dismissed under the Immigration Rules.
4. In his grounds seeking permission to appeal, the appellant contended that he had leave when he made his application dated 5 September 2014, which was the subject of the decision on appeal. That decision was made on 5 February 2015. It was also contended that the respondent suspended and subsequently revoked his sponsor's licence and that he had no knowledge of such a suspension or revocation and accordingly, pursuant to Patel, the respondent should have granted him 60 days' leave in order to enable him to obtain another CAS.
5. On 24 May 2016, Upper Tier Tribunal Judge Gill granted the appellant permission to appeal. She found that the First-tier Tribunal was unclear about the appellant's immigration history and that she considered that she did not have "evidence" that the appellant had leave when he made his application on 5 September 2014.
6. Judge Gill found that it was arguable that she may have overlooked the fact that the decision letter dated 5 February 2015 specifically states that the appellant had a right of appeal and that he did not need to leave the UK while the appeal is pending. That suggested that the respondent's position was that the appellant had leave when he made his application. This in turn may have led the Judge to take a different view as to whether Patel applied.
7. Judge Gill directed that the respondent was to serve a written notice setting out the appellant's immigration history.
8. Mr Duffy referred to a "respondent's notice" filed on behalf of the respondent in which his immigration history has been set out. From the UKVI Immigration database, the following was noted:
 - i. The appellant made an application for leave to enter as a Tier 4 Student on 10 January 2011. The application was granted and the visa was issued on 3 March 2011. It was valid until 10 April 2012. It was not known when he entered the UK.
 - ii. On 10 April 2012, the appellant made an application for further leave to remain as a Tier 4 student which was granted, and leave was given until 28 May 2013.
 - iii. On 2 May 2013, he made a further application which was granted until 29 September 2015. The curtailment letter of 4 July confirms this action.

- iv. On 4 July 2014, the respondent curtailed his leave until 7 September 2014.
 - v. On 5 September 2014, the appellant made a further application for leave to remain as a Tier 4 student which was refused. The database indicated that the appellant had a right of appeal against the decision.
9. On behalf of the appellant, Mr Turner submitted that the appellant should have been granted a period of 60 days to find a CAS. As at the date of application, he had not been able to obtain one. The Judge should have “evaluated” whether he should be given time to obtain such a CAS. The Judge had stated at [12] that from the evidence before her, the appellant did not have limited leave to remain when he made his application and thus Patel did not apply to him. A further period of leave to remain in order to enable him to present a CAS.
 10. Mr Duffy on behalf of the respondent accepted that the Judge's finding that the appellant did not have valid leave at the time of his application was incorrect as his leave to remain expired on 7 September 2014. He had submitted an application prior to that, on 5 September 2014.
 11. He submitted that the error was not material as the appellant had failed to submit a valid CAS with his application and his appeal would have been refused in any event. No evidence had been submitted with his grounds to establish that he was in fact in possession of an assigned CAS when his application was made.
 12. Mr Duffy further submitted that the appellant had submitted an offer letter from London College of Advanced Management which post dated the date of the decision. In making such an offer for a Level 6 Diploma in Management, which was to commence on 2 September 2014, and to be completed on 2 September 2015, the latest joining date was 30 September 2014.
 13. The college stated that in order to confirm his admission, they must receive confirmation from the Home Office that he has valid leave to remain.
 14. Mr Duffy produced the decision letter from the Home Office dated 4 July 2014 which was sent to the appellant 2014, curtailing his leave to remain as a Tier 4 (General) Student until 7 September 2014. He had been granted leave to remain as a Tier 4 (general) student until 29 September 2015 in order to undertake a course of study at Stanfords College UK Ltd.
 15. The Home Office was informed by that college on 28 May 2014 that he had ceased studying with them. Home Office records were checked and there was no evidence that he had made an application to change a sponsor or make a fresh application for entry clearance, leave to enter or leave to remain in the UK in any capacity.

16. As he had been excluded or withdrawn from his course of studies as notified by the Tier 4 sponsor, his leave was curtailed under the rules until 7 September 2014.
17. He was informed that before his current leave to remain expired, he should either leave the UK or submit a fresh application for leave to remain.
18. In the decision dated 4 July 2014 the appellant had in fact been given a period of 62 days to present a further application.
19. Mr Duffy submitted that the appellant's current submission appears to be that he should be given an additional 60 days over and above the initial period.
20. The appellant had in fact failed to have a CAS assigned to him. Nevertheless, he had "put in a holding application". There was no obligation on the respondent to extend his period of leave or give him a further 60 days.
21. In reply, Mr Turner submitted that it had been open to the Judge, after looking at the offer letter, to have stated that she accepts that it had been difficult for him to obtain a CAS. He had a conditional offer and she should have allowed him a further period to present a valid CAS.
22. Mr Turner accepted that the offer in fact post dated the date of decision.

Assessment

23. I have had regard to the decision referred to me by Mr Duffy during the course of his submissions, namely Marghia (Procedural Fairness) [2014] UKUT 00366 (IAC).
24. The Tribunal held that the common law duty of fairness is essentially about procedural fairness. There is no absolute duty at common law to make decisions which are substantively fair. The Court will not interfere with decisions which are objected to as being substantively unfair, except the decision in question falls foul of the Wednesbury test, i.e. that no reasonable decision-maker or public body could have arrived at such a decision.
25. The respondent in her decision dated 4 July 2014 noted that the appellant was granted leave to remain as a Tier 4 (General) Student until 29 September 2015 to take a course at Stanfords College UK Ltd. However, the respondent had been informed by the college on 28 May 2014 that he had ceased studying with them.
26. Records were checked and there was no evidence that he had made an application to change his sponsor or to make a fresh application for leave to enter or remain in the UK in any capacity.

27. As he had been excluded or withdrawn from his course of studies, as notified by his sponsor, leave was curtailed until 7 September 2014.
28. The appellant was informed that prior to his current leave to remain expiring, he would, inter alia, need to submit a fresh application for leave to remain. He was not entitled to appeal that decision.
29. The appellant was accordingly granted a period in excess of 60 days in order to meet the requirement of the Rules, including his entitlement to be awarded 30 points for the CAS.
30. The appellant then made his application on 5 September 2014 which was two days prior to his leave to remain expiring. In his application, he stated that he did not have the CAS.
31. I find that the appellant had already been given 60 days in order to submit an application where a CAS had been assigned to him.
32. I do not accept that the respondent was, in these circumstances, required as a matter of procedural fairness, to afford him a further opportunity of obtaining a CAS. He had already been granted in excess of 60 days which would include the production of a CAS letter.
33. The appellant has sought to rely on an offer which post-dated the date of the decision and is not admissible.
34. The Judge dismissed the appellant's appeal on the basis that he did not have limited leave to remain in the UK when his application was made. That is incorrect. The Judge consequently found that as a result of not having such leave to remain, the dicta in Patel did not apply to him. I do not find that the error of the First-tier Tribunal Judge was material. The decision of the respondent which was appealed against had, for the reasons referred to, been procedurally fair.
35. I accordingly reject the submission that the appellant should have received a further period in which to produce a valid CAS. The appellant had been given this opportunity but failed to produce the necessary confirmation.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of any material error on a point of law. The decision shall accordingly stand.

No anonymity direction is made.

Signed

Date 20 July 2016

Deputy Upper Tribunal Judge Mailer