



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/33453/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 30th November 2015**

**Decision & Reasons
Promulgated
On 20th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

MUHAMMAD NAQASH ASIF

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Malhotra, Counsel; instructed by Renaissance Solicitors

For the Respondent: Ms L Ong, Senior Presenting Officer

DECISION AND REASONS

1. For ease of comprehension, the parties are referred to by their appellate status and positions before the First-tier Tribunal.
2. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Miles allowing the Appellant's appeal against the Secretary of State's refusal of his application for further leave as a Tier 4 student on the basis that the decision was not in accordance with the law.
3. The First-tier Tribunal promulgated its decision allowing the Appellant's appeal against the Respondent's decision on 15 April 2015.

4. The Respondent appealed against that decision and was granted permission to appeal by Upper Tribunal Judge Grubb. The sole basis upon which permission was granted may be summarised as follows:
 - (i) It is arguable that the judge erred in reaching a finding of unfairness given that the appellant had not submitted a valid CAS when the sponsor's licence was revoked, as it is not the Respondent's action which led to the appellant being unable to meet the Rules.
5. I was not provided a Rule 24 response from the Appellant but was addressed by his Counsel by way of oral submissions. It is of note that the Respondent chose not to be represented at the hearing before the First-tier Tribunal, but was represented at the hearing before me.

No Error of Law

6. I do not find that there was an error of law in the decision such that it should be set aside. My reasons for so finding are as follows.
7. At the start of the hearing, Ms Malhotra produced a copy of the letter of 11 June 2014 from the Respondent's contact centre to the Appellant, which informed him that he should make his request for a "60-day letter" via email. It is not in dispute that this letter was sent and that the Appellant followed this advice the very next day, on 12 June 2014.
8. Having seen the letter before the hearing began, Ms Ong pragmatically acknowledged that the letter from the UKVI contact centre left her in some difficulty because it stated that the Appellant needed to send a request for the 60 day letter, which led to him sending that request via email that would then allow him to enrol with a college. Ms Ong acknowledged that this letter was sent to UKVI although she suggested the caseworker probably would not have had it. However, she also acknowledged that as the email from the Appellant was sent to UKVI as he was advised to do by the contact centre, it gave the Appellant an expectation that he should receive a 60 day letter and an opportunity to find another college.
9. For the Appellant, Ms Malhotra agreed with Ms Ong's submission that there was an expectation on the part of the Appellant and further submitted that this appeal was not exactly like *Patel (revocation of sponsor licence - fairness) India* [2011] UKUT 211 (IAC) as stated by Upper Tribunal Judge Grubb in granting permission. This is because Judge Miles considered the sequence of events in correct detail, and it is the Appellant's engagement with the Respondent's advice in obtaining the 60 day letter that gave rise to unfairness, not the revocation of the college's sponsor licence.
10. In my view, the parties are right to suggest that the Appellant was given an expectation by the UKVI contact centre that he would be given a 60

day letter which would then allow him to enrol with a college. This advice was acted upon, the request was made, but no reply was forthcoming till date. That was an action which the judge was entitled to classify as unfair. The suggestion that this appeal should fail for lack of a CAS letter ignores fact that the appeal succeeded to the extent that the decision was not in accordance with the law, which is a question of common law and public law fairness, that requires resolution regardless of whether the Rules were satisfied or not. Ms Malhotra is quite right, that fairness depends on the particular context of the scenario in question, and here the judge considered that context and decided that the Appellant was treated unfairly which was a decision the judge was clearly entitled to reach (see the second headnote in *Thakur (PBS decision - common law fairness) Bangladesh* [2011] UKUT 00151 (IAC), for example).

11. Furthermore, in relation to the basis upon which permission was granted, it is noteworthy that the appeal was only allowed to the extent of procedural unfairness in the decision reached, not on the basis that the Rules were satisfied.
12. In conclusion, the judge was entitled to reach the findings that were made due to the above-mentioned situation that left the Appellant with an expectation of receiving a 60 day letter which was not forthcoming and resulted in unfairness.
13. Therefore, it remains for the Respondent to act upon the Appellant's request for a 60 day letter as she gave him an expectation he would receive, and to issue a new decision in due course, the previous decision not being in accordance with the law.
14. Consequently, given my findings above, the grounds do not reveal an error of law such that the decision should be set aside.

Decision

15. The appeal to the Upper Tribunal is dismissed.
16. The decision of the First-tier Tribunal is affirmed.

Signed

Date

Deputy Upper Tribunal Judge Saini