



IAC-FH-NL-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/18614/2015

THE IMMIGRATION ACTS

Heard at Field House

On 6 April 2016

**Decision &
Promulgated**

On 28 April 2016

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**TILAK SAPKOTA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Khan, Counsel, instructed on Public Access

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Veloso, promulgated on 11 September 2015, in which she dismissed his appeal both under the Immigration Rules and in respect of Article 8 ECHR. That appeal to the First-tier Tribunal was against the Respondent's decision of 7 May 2015, refusing his application for further leave to remain

in the United Kingdom as a Tier 4 Student and also to remove him by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. Following the Respondent's refusal of his application the Appellant asked for a determination of his case on the papers alone. However, on his case, the Appellant thereafter wrote to the First-tier Tribunal requesting that he could after all have an oral hearing and that he would pay the requisite additional fee.

The judge's decision

3. The judge decided the Appellant's appeal without an oral hearing. Based upon the evidence on file the judge found that at the time of the Respondent's decision the Appellant had no valid CAS. As a result the application was bound to fail, as was the appeal. The judge went on to find that there had been no procedural unfairness by the Respondent and that the decision to remove him from the United Kingdom would not breach Article 8. The appeal was duly dismissed on all grounds.

The grounds and permission to appeal

4. The grounds of appeal argued that the Appellant had asked for an oral hearing of his appeal but this had not been acted upon. As a result there had been procedural unfairness in respect of the judge's decision. Permission was granted by Upper Tribunal Judge Plimmer on 15 February 2016.

My decision on error of law

5. Having looked through the Tribunal's file in detail I have seen the Appellant's written request for an oral hearing, dated 16 July 2015. It is addressed to the First-tier Tribunal hearing centre in Manchester and was sent to the fax number ending 4164. I have also seen the standard directions notice (IA35) issued to the Appellant on 2 July 2015. The fax number at the top of this form is the same as that to which the faxed letter of 16 July was sent. I am satisfied that both numbers are one and the same, and that they relate to the Manchester hearing centre. I am also satisfied that the fax letter of 16 July 2015 was in fact received by the First-tier Tribunal. It seems as though the Appellant's request was simply not acted upon.
6. It follows from the above that through no fault of her own the judge was wrong to have determined the Appellant's appeal without an oral hearing. There has been an obvious procedural unfairness.

7. In light of this the judge's decision is set aside.

Disposal

8. In respect of what should happen next, Mr Khan submitted that it was probable that the Appellant's CAS had been withdrawn by the college as a result of its licence being suspended by the Respondent. That being the case, the Respondent should have contacted the Appellant and offered him the sixty-day day period for him to seek a new CAS from a different institution and, as Mr Khan submitted, this had not occurred. Therefore the Respondent had acted unfairly. He submitted that the Appellant's appeal should therefore be allowed to the limited extent that the Respondent's decision of 7 May 2015 was not otherwise in accordance with the law and that a fresh decision must now be made.
9. Mr Kotas submitted that it was unclear as to why and when the Appellant's CAS had been withdrawn. The burden was on the Appellant to show that it was withdrawn only as a result of the Respondent's actions, and the Appellant had not in fact adduced any significant evidence to discharge that burden.
10. Initially, I was of the view that I could deal with this matter on the evidence before me. However, on reflection I have decided to remit the appeal to the First-tier Tribunal. My reasons for this are as follows.
11. First, where there has been clear procedural unfairness and an appellant has effectively been deprived of a hearing, the normal course would be to remit the matter (see paragraph 7 of the Practice Statements).
12. Second, in this case it is true that the college's licence was suspended by the Respondent at some unknown point in time. However, it is unclear to me when the CAS was in fact withdrawn and for what reason. I note from the CAS printout at C1 of the Respondent's bundle that the expiry date of the CAS is stated to be 28 August 2014.
13. Third, in light of the above, the answers to relevant questions are not as readily discernable as I had originally thought. The balance tips in favour of remittal.
14. At the remitted hearing the CAS issue can be fully argued out, with relevant evidence being adduced as to when and why the CAS was withdrawn. Article 8 has been relied on. This remains open to the Appellant, although the prospects of success must be slight.

Notice of Decision

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

I set aside the decision of the First-tier Tribunal.

I remit the case to the First-tier Tribunal.

Directions to the parties:

- 1. The parties are to comply with any directions issued by the First-tier Tribunal;**
- 2. In any event, any further evidence relied upon by either party shall be filed and served on the First-tier Tribunal and the other side no later than 10 working days prior to the remitted hearing.**

Directions to listings

- 1. The appeal is remitted to the Hatton Cross hearing centre, to be heard on a date to be fixed by that centre;**
- 2. The remitted hearing shall not be conducted by First-tier Tribunal Judge Veloso;**
- 3. There will be a one hour time estimate**
- 4. No interpreter is required.**

No anonymity direction is made.

Signed

Date: 26 April 2016

Deputy Upper Tribunal Judge Norton-Taylor