Upper Tribunal
(Immigration and Asylum Chamber)   Appeal Number: IA/34922/2014

THE IMMIGRATION ACTS

Heard at Birmingham   **Decision & Reasons**
                                           Promulgated
On 17 March 2016   **On 13 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

<u>Appellant</u>

and

USMAN KHALIQ
(ANONYMITY DIRECTION NOT MADE)

<u>Respondent</u>

Representation:
For the Appellant: Mr I Richards, Home Office Presenting Officer
For the Respondent: No appearance (Syeds Solicitors remain on record)

DECISION AND REASONS

Introduction

1. For ease of reference, I shall refer to the parties as they were before the First-tier Tribunal. The Secretary of State is therefore the Respondent and Mr Khaliq is once more the Appellant.

2. This is an appeal by the Respondent against the decision of First-tier Tribunal Judge Trotter (the judge), promulgated on 4 December 2015, in which he allowed the Appellant's appeal. That appeal was against the

Respondent's decisions of 27 August 2014, refusing to vary leave to remain as a Tier 4 student and to remove him from the United Kingdom under section 47 of the Immigration, Asylum and Nationality Act 2006.

3. By an application made on 30 April 2013 the Appellant had originally sought to continue his studies in this country at Millburn College of Professional Studies. However, this institution surrendered its licence and the Respondent afforded the Appellant a sixty-day period in which to find a new sponsor. This he sought to do, the new institution being Zaskin College in Harrow. Based on the information available to her, the Respondent refused the application on a simple basis: the Appellant had no valid CAS, and therefore no points could be awarded under Appendix A to the Immigration Rules.

The judge's decision

4. The appeal came before the judge as a 'paper case', the Appellant having elected this course of action and the Respondent not objecting thereafter.

5. The judge accepted that the Appellant had, on 20 August 2014, sent into the Respondent documentation he "believed" (the term used by the judge) to include a valid CAS. In addition, an admission letter from Zaskin College was submitted on the same date.

6. In paragraph 9 of his decision, the judge appears to accept that the document "described" and "believed" by the Appellant to be a valid CAS was indeed a valid CAS, and that as a result the Appellant had complied with the Immigration Rules. The appeal was allowed on this basis.

The grounds of appeal and grant of permission

7. The grounds assert that there was no valid CAS in place, and the judge erred in concluding otherwise.

8. Permission to appeal was granted by First-tier Tribunal Judge Ransley on 27 January 2015.

The hearing before me

9. Neither the Appellant nor anyone from Syeds Solicitors appeared at the hearing. I waited until late morning before dealing with the case. There had been no communications from the Appellant or his representatives to indicate why they could not attend or why the matter should not be dealt with in their absence. I was satisfied that notice of hearing was sent to the addresses on file. Having considered rules 2 and 38 of the Upper

Tribunal's Procedure Rules, I was satisfied that the appeal should be decision in the absence of the Appellant and his representatives.

My decision on error of law

10. The judge's decision is fundamentally flawed and must be set aside.

11. What constitutes a valid CAS is defined in paragraph 6 of the Immigration Rules. The mandatory requirement for this specific element of an application is clearly set out in Appendix A to the Rules.

12. With respect to the judge, there simply was no valid CAS in existence at any material time. The documents submitted by the Appellant on 20 August 2014 did not constitute a valid CAS. There was no other evidence to indicate that a CAS had been assigned to the Appellant.

13. The judge misdirected himself in law as to what constituted a valid CAS. Alternatively, his conclusion that there was a valid CAS was perverse. Either way, he materially erred.

Remaking the decision

14. There was no reason why I should not remake the decision on the evidence before me.

15. Mr Richards submitted that there was no valid CAS and so the appeal under the Rules must fail. Although Article 8 had been alluded to in the original notice of appeal to the First-tier Tribunal, there was no merit to it.

16. I find that there was no valid CAS as at the dates the application was made and its subsequent refusal by the Respondent on 27 August 2014. As I have stated previously, the documentation submitted by the Appellant just did not constitute the mandatory unique reference number required by the Rules, notwithstanding the Appellant's belief to the contrary.

17. Without a valid CAS, the Appellant's application was bound to fail, and his appeal shares the same fate.

18. In respect of Article 8, there is no elaboration on this issue anywhere in the evidence. On any view, the 'Article 8 Rules' are not met by the Appellant. Outside of these, I find that the Appellant does not even have a private life in the United Kingdom. If he did, removal would not constitute a sufficiently serious interference with that life, having regard to Patel [2013] UKSC 72 and other well-known case law on the subject of those in the Appellant's position. For the sake of completeness, removal would of course be proportionate, having regard to the absence of any material factors in the Appellant's favour, the importance of the public interest, and

the factors under section 117A-B of the Nationality, Immigration and Asylum Act 2002.

Anonymity

19. No direction was made by the First-tier Tribunal and none is appropriate at this stage.

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 re-make the decision by dismissing the appeal on all grounds.

Signed   Date: 8 April 2016

H B Norton-Taylor
Deputy Judge of the Upper Tribunal

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed   Date: 8 April 2016

Judge H B Norton-Taylor
Deputy Judge of the Upper Tribunal