



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/42587/2014  
IA/42588/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 11 February 2016

Determination Promulgated  
On 3 March 2016

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

AP  
RP

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Mr A Al Arayn, Counsel, instructed by Farani-Javid-Taylor Sols.

For the Respondent: Ms A Brocklesby-Weller, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This appeal is not subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party has invited me to make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) and I have not done so.
2. The appellants appeal against the decision of the First-tier Tribunal (Judge Reid) dismissing the appellants' appeal against a decision taken on 7 October 2014 to refuse

the appellants' applications for further leave to remain in the UK and to remove the appellants from the UK.

### **Introduction**

3. The first appellant is a citizen of India born in 1980. She first arrived in the UK in 2009 as a Tier 4 student. The second appellant is a citizen of India born in 1978; the husband of the first appellant and he first arrived in the UK in 2009 as a Tier 4 student dependent. The current applications were made in time on 7 July 2014.
4. The Secretary of State decided that the first appellant had failed to provide a valid CAS and therefore was not satisfied that the first appellant had a valid CAS. The applications were refused.

### **The Appeal**

5. The appellants appealed to the First-tier Tribunal and attended an oral hearing at Taylor House on 1 June 2015. They were represented by Mr Kannangara, Counsel. The First-tier Tribunal found that the first appellant did not meet the points requirement and could not answer the questions at the oral hearing as to whether she intended to study for ATHE Level 6 Diploma in Management (as per her application) or the ACCA qualification (as per her oral evidence). She had failed the English test which was a prerequisite for the application CAS. The judge found that her plans had changed and that a fresh application to the respondent with a CAS relevant to the ACCA course would have been required.

### **The Appeal to the Upper Tribunal**

6. The appellant sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law by failing to consider relevant case law relating to fairness. The respondent had erred by not granting the first appellant certified copies of her passport. Without her passport the first appellant could not sit for an English test or obtain a CAS. There was a duty on the respondent to act fairly.
7. Permission to appeal was granted by First-tier Tribunal Judge Simpson on 30 October 2015 on the basis that it was not in dispute that the first appellant did not have a valid CAS when she submitted her application because she had failed the English test. The judge pointed out that the first appellant could ask the respondent for a certified copy of her passport to re-sit her English test. Given that finding, it was arguable that the judge ought to have allowed the appeal to the extent that the first appellant be granted a 60 day grace period in which to re-sit the test.
8. In a rule 24 response dated 12 November 2015 the respondent submitted that the first appellant did not have a valid CAS because she had failed the English exam. The requirements of the Rules were not met and it was open to the first appellant to seek a copy of her passport, retake the test and submit a fresh application.
9. Thus, the appeal came before me

### **Discussion**

10. Mr Al Arayn conceded that the first appellant did not have a valid CAS at the time of application but she was unable to use the English language test for her later application and the respondent should have given her certified copies of her

passport. The common law duty of fairness argument was not considered by the judge. The appeal should be remitted for a de novo hearing.

11. Ms Brocklesby-Weller submitted that the respondent does not have to make substantively fair decisions, just to consider common law fairness. In this case there was no CAS and the first appellant had failed her English language test. She did not ask the respondent for a copy of her passport. The fault lay entirely with the first appellant.
12. Mr Arayn responded that the unfairness in this case was withholding the certified copy of the passport but conceded that there was nothing in the witness statements or other evidence to confirm a request for the certified copy of the passport.
13. I have considered Patel (revocation of sponsor licence – fairness) India [2011] UKUT 00211 (IAC). The facts of that case were wholly different but the general principle is that immigration judges have jurisdiction to determine whether decisions on variation of leave applications are in accordance with the law, where issues of fairness arise. In this appeal, the first appellant did not have a valid CAS at the time of her application and did not request a certified copy of her passport in order to retake the English test. There is nothing in the case law which required the judge to allow the appeals in those circumstances.
14. I also have regard to the concession made in the rule 24 response to the effect that it is still open to the first appellant to seek a copy of her passport, retake the test and submit a fresh application. That must be a reference to an in-country application because the first appellant would not need a copy of her passport if she were to be removed from the UK using her original passport as her travel document and was then obliged to make any further application from India.
15. I am satisfied that the concession cures any possible unfairness, providing that any future application is not refused simply on the ground that the first appellant has no leave to remain when she submits the fresh application. It would not be reasonable for the concession to be open ended and 60 days is a reasonable maximum period for submission of a fresh application.
16. Thus, the First-tier Tribunal's decision to dismiss the appellants' appeals did not involve the making of a material error of law. The decision stands.

### **Decision**

17. Consequently, I dismiss the appeals of the appellants.

Signed   
Judge Archer

Date 26 February 2016

Deputy Judge of the Upper Tribunal