



IAC-FH-CK-V1

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

Appeal Number: IA/44699/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 3rd December 2015**

**Decision & Reasons Promulgated
On 5th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR SAJAN KOSHY
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr L Tarlow, Home Office Presenting Officer

For the Respondent: No Appearance

**DECISION AND REASONS
EX TEMPORE JUDGMENT**

1. The Appellant in these proceedings was the Respondent before the First-tier and I shall refer to the parties as they were known at the First-tier for my convenience.
2. The Respondent appeals with permission a decision of the First-tier Tribunal promulgated on 5th June 2015 in which the judge allowed the Appellant's appeal to the limited extent that the Respondent had failed to consider the application of her policy relevant to students where a

Sponsor's licence was revoked in the course of an application and prior to decision.

3. The application was made on the basis that the judge in reaching that conclusion mistakenly found that the Respondent had failed to apply her policy. The reasons for refusal letter had indicated to the judge that in fact on 8th August 2014 the Appellant was informed of the revocation of the licence and of the fact that as a result the Respondent had decided to afford him a further opportunity to obtain a new Sponsor and amend his application accordingly.
4. The Appellant has not provided any Rule 24 response to the grant of permission and has not taken issue with the Respondent's contention. I have before me a copy of the letter, in fact, as Mr Tarlow points out, dated 9th August 2014 which confirms to me that the assertions made by the Respondent in the reasons for refusal letter are established. The Appellant has written with the assistance of legal representatives to the court inviting the Upper Tribunal to deal with the appeal in his absence but that letter does not take any issue with the grounds of the application and nor is there any Rule 15 application to provide or attach any additional evidence for me to take into account in the event of my finding an error and moving to determine and rehear the appeal as a result.
5. In those circumstances I am satisfied that it is in the interests of justice that I should exercise my discretion under Rule 38 and proceed to deal with the matter in the absence of the party both in terms of the error of law hearing and of moving on to make a decision in respect of any rehearing.
6. I am satisfied that the decision of the judge is vitiated by legal error for the reasons identified in the grant of permission, namely that the judge proceeded on the grounds of mistaken fact and that the Respondent had indeed acted in accordance with her policy.
7. Turning to the rehearing of the substance of the Appellant's appeal: the decision was made on the basis that he did not provide a valid CAS as required under the points-based scheme. The evidence plainly establishes that that is correct. He did not provide a valid CAS, and none of the grounds that the Appellant has put forward disputes the fact that he did not have a valid CAS. For those reasons the Appellant's appeal on Immigration Rules grounds relating to the points-based system, fails.
8. Turning to the alternative Ground of Appeal raised by the Appellant, namely that the decision breaches his Article 8 rights, I note that no evidence was submitted to substantiate that position, the Appellant relying on a broad assertion that having arrived here as a student he has established a private life which is sufficient to outweigh the public interest in his removal as a person who does not have any right to remain in the context of the Immigration Rules.

9. The evidence before me does not establish that the Appellant has established a character and quality of private life that could possibly outweigh the public interest in his removal, not only in the context of the Article 8 ECHR balancing exercise required by Razgar but specifically with reference to Section 117 of the 2002 Nationality, Immigration and Asylum Act as recently amended. The Appellant's private life has been entirely formed in the context of a precarious immigration status and nothing in the evidence indicates that there is any merit in his assertion that he should otherwise be entitled to remain.

Notice of Decision

10. The decision of the First-tier tribunal is vitiated by error and is set aside. I remake the decision by dismissing the appellant's appeal.
11. No anonymity direction is made.

Signed E Davidge

Date 30 December 2015

Deputy Upper Tribunal Judge Davidge