



**Upper Tribunal  
(Immigration and Asylum Chamber)  
Number: IA/45563/2014**

**Appeal**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 10 February 2016**

**Decision and Reasons  
Promulgated  
On 22 February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**DAVINDERJIT SINGH**

Respondent

**Representation:**

For the Appellant: Ms A Everett, Senior Home Office Presenting Officer  
For the Respondent: absent

**DECISION AND REASONS**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Hussain, promulgated on 1 September 2015 which allowed the Appellant's appeal.

## Background

3. The Appellant was born on 4 August 1990 and is a national of India.
4. On 29 October 2014 the Secretary of State refused the Appellant's application for leave to remain in the UK as a Tier 4 (general) student.

## The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Hussain ("the Judge") allowed the appeal against the Respondent's decision.
6. Grounds of appeal were lodged and, on 8 January 2016, Judge Fisher gave permission to appeal stating *inter alia*

*"3. In his decision, the Judge made reference to Paragraph 43 of the Respondent's Tier 4 Guidance, which stated that, where a CAS has been withdrawn, the same procedure applies as when a CAS becomes invalid. However, the section of the Guidance to which the Judge refers appears to contemplate a situation where the Tier 4 sponsor's licence is suspended or revoked, preventing the assignment of any new CAS or the invalidation of any existing CAS, respectively.*

*"4. There does not appear to have been any evidence before the Judge to demonstrate the circumstances of the withdrawal of the CAS, and so it is arguable that he erred in finding that the Guidance in question applied. In those circumstances, permission to appeal is granted."*

## The Hearing

7. The Appellant did not attend the appeal nor was he represented at the appeal. By letter dated 8<sup>th</sup> February 2016, the appellant's solicitors indicated that neither the appellant nor they would attend the hearing. I am therefore satisfied that having been served notice of the hearing and not attended it is in the interests of justice to proceed with the hearing in the Appellant's absence as I am entitled to do by virtue of paragraph 38 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

8. Ms Everett, for the respondent, adopted the terms of the grounds of appeal. She told me that the focus in this case is at [6], [7] & [8] of the decision, and that the Judge has misunderstood (or misinterpreted) the respondent's Tier 4 guidance. She told me that the Tier 4 guidance is arguably misleading because the meaning that it intends to convey is that only if a CAS is withdrawn by the respondent then the respondent will treat the appellant's case in the same way as if the CAS becomes invalid. In this case it is beyond dispute that the sponsoring college withdrew the CAS. Ms Everett told me that that is an important distinction because it is incumbent upon the appellant to make sure that his CAS is valid. She

urged me to set the decision aside and substitute a decision dismissing the appellant's appeal.

9. I take account of the contents of the letter from the appellant's solicitors dated 8 February 2014, which argues that the decision does not contain an error of law material or otherwise, and that the decision is made in contravention of the respondent's own guidance.

### Analysis

10. It is common ground that the appellant relies on a CAS which was subsequently withdrawn by his sponsoring college. It is clear from [6], [7] & [8] that the Judge reached a decision in this case by considering the respondent's own tier 4 guidance. I exhibited a copy of the tier 4 guidance which was before the Judge to Miss Everett, who confirmed that it was the correct version of the Tier 4 guidance to be considered.

11. The Judge, at [6], found that the fulcrum of this case lies at paragraph 43 of the respondent's Tier 4 guidance. Paragraph 43 of that guidance is the last paragraph in the section headed "*When is a CAS valid?*", And says

*"Your CAS can be withdrawn or cancelled at any time by either us or by your tier 4 sponsor. Where your CAS has been withdrawn or cancelled, the same procedures apply as where a CAS becomes invalid. These procedures are explained in more detail in annex 2 of this document."*

12. The Judge refers to annex 2 of that the document in [7] of the decision, where he finds that the guidance indicates that the Secretary of State will "*delay consideration of the application for 60 days to allow the appellant to obtain a CAS*". It is argued that at [6], [7] & [8] the Judge creates a material error of law because he has misinterpreted the respondent's own guidance. It is argued that the respondent's own guidance only applies to a situation with a CAS is withdrawn by the respondent.

13. There is no error of law in the decision. It was not wrong for the Judge to consider the respondent's Tier 4 guidance. The respondent's Tier 4 guidance clearly envisages situations where a CAS is withdrawn by the sponsor, and not just the respondent. The passage quoted above at [11] of this decision (taken together with annex 2 of the document) clearly states that when a tier 4 sponsor withdraws a CAS the respondent will delay consideration of an application for 60 days to allow the appellant to obtain a CAS.

14. The Judge's decision is that the respondent has not followed the respondent's own guidance, so that the appellant still awaits a lawful decision. That is a decision which was open to the Judge on the evidence presented. It is a decision which is entirely supported by the respondent's own tier 4 guidance.

15. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that the Upper Tribunal would not normally set aside a

decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

16. I find that the Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed and based on cogent reasoning. The decision does not contain a material error of law.

## **CONCLUSION**

**17. No errors of law have been established. The Judge's decision stands.**

## **DECISION**

**18. The appeal is dismissed. The decision of the First-tier Tribunal stands.**

Signed

Date 15 February 2016

Deputy Upper Tribunal Judge Doyle