



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

Appeal Number: IA465432014

THE IMMIGRATION ACTS

**Heard at Field House
On 14 March 2016**

**Decision & Reasons
Promulgated
On 23 May 2016**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

MR MD SHAFIQL ISLAM KHAN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Erum Waheed, Counsel, instructed by Hubers Law Solicitors

For the Respondent: Mr Seb Kandola, 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 appellant appeals against the decision of the First-tier Tribunal (Judge Sullivan) dismissing the appellant's appeal against a decision taken on 28 October 2014 to refuse to grant further leave to remain and to remove the appellant from the UK.

Introduction

3. The appellant is a citizen of Bangladesh born on 5 November 1986. He came to the UK as a student on 8 May 2009 and was granted leave to enter until 30 June 2010. His leave was subsequently extended until 23 December 2012. The appellant states that he asked for extra time to submit a CAS when he applied on 22 December 2012 and then submitted a valid CAS from Bell's College on 8 March 2013. On 31 July 2014 the respondent advised the appellant about concerns regarding his TOEIC test results and then on 1 October 2014 an English language test was cancelled because the test centre rejected the identity document provided to the appellant by the respondent. He then received the refusal.
4. The Secretary of State accepted the appellant's identity and nationality but concluded that his CAS had been withdrawn by the sponsor college by 28 October 2014 and there was no valid English language test certificate. The requirements of paragraph 245ZX of the Rules were not met.

The Appeal

5. The appellant appealed to the First-tier Tribunal and his appeal was eventually determined on the papers on 25 August 2015. He submitted that he was not informed that the CAS had been withdrawn and only learned about it from the refusal. The respondent should have informed him and given him an opportunity to find a new sponsor. The First-tier Tribunal found that the appellant had not submitted a CAS with his application form and rejected his claim that he did not know that the CAS had been withdrawn. He knew on 28 February 2013 that the London School of Technology was no longer licensed to issue a CAS, he had taken the opportunity by 8 March 2013 to seek a CAS from Bell's College instead and he was aware by 25 September 2014 that Bell's College was no longer a Tier 4 sponsor. The appellant said that he was informed on 31 July 2014 that he had an opportunity to provide a replacement English language test certificate and made arrangements to take a new test on 11 October 2014. His test was cancelled on 26 September 2014. The judge found that the appellant had a three month period to take an English language test and to provide the required evidence. He had not done so. The respondent waited 10 months to make a decision and there was no unfairness.

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 because the appellant had found himself unable to take any English language test with the identification provided by the respondent. That was not fair. The appellant had not been given any opportunity to provide further documents when he changed his oral hearing to a paper hearing.
7. Permission to appeal was granted by First-tier Tribunal Judge Ford on 24 January 2016 on the basis that it was arguable that the judge may not have appreciated that the reason for the appellant not re-sitting the English language test was that the test providers were unable to accept the only form of ID provided to the appellant by the respondent. The other grounds were not arguable because directions were sent to the appellant on 9 July 2015 notifying him that he had the opportunity to file and serve any additional evidence by 4 August 2015.
8. In a rule 24 response dated 8 February 2016 the respondent submitted that the judge had considered the common law fairness grounds and made adequate sustainable findings that whilst the English language test was cancelled on 26 September 2014 the appellant had not said whether he had informed the respondent of that cancellation.
9. Thus, the appeal came before me

Discussion

10. Mr Waheed submitted that the appellant was set up to fail. The CAS was not obtained because the certified copy of the passport given to the appellant was not adequate to undertake the IELTS test. The respondent acknowledged on 31 July 2014 that the appellant had taken the IELTS test but his test scores had been cancelled. He then got more time to sit the test on 11 October 2014 but was required to bring his original passport. The respondent was saying that a certified copy would be sufficient but that was not the case. A further attempt to take the IELTS test on 27 June 2015 also failed because the appellant was required to produce his original passport and could not do so. The reality was that the appellant required an original passport. The appellant confronted a brick wall and there is no evidence that a certified copy of a passport is accepted by any college. Mr Waheed conceded that there was no evidence that the appellant had asked for his passport but he was told that a certified copy would be enough. The respondent should have been aware that a certified copy was not enough.
11. Mr Kandola submitted that the appellant never had the required English language certificate. Everything else follows from that defect which lay with the appellant who then spent two years trying to rectify the deficiency. The CAS was assigned in 2013 but the college licence was then surrendered. The respondent's letter of 31 July 2014 gave another opportunity to cure the defect. The respondent was not legally required to give the many opportunities that were given. The application was always

dependent upon the English language certificate and was doomed to fail because it was submitted without all of the necessary documents.

12. The events set out in this appeal took place over a considerable period. The crucial pieces of correspondence are the respondent's letter of 31 July 2014 and the letter from AK Solicitors dated 25 September 2014. The respondent's letter set a deadline of 25 September 2014 for submission of a new English language test certificate. The solicitor's letter of 25 September 2014 stated that the appellant was undertaking the IELTS test on 11 October 2014 and expected to receive the result by 25 October 2014. The appellant was then notified by the British Council on 26 September 2014 that his identity document was rejected and on 1 October 2014 was informed that his test date had been cancelled. Nothing further was submitted to the respondent before the decision was made on 28 October 2014 and there was no request for return of the original passport after the appellant became aware that the certified copy of his passport was not adequate proof of identity.
13. I have considered Patel (consideration of Sapkota - unfairness) India [2011] UKUT 00484 (IAC) and Thakur (PBS decision - common law fairness) Bangladesh [2011] UKUT 00151 (IAC). I find that the respondent did not ignore any request for further time made on behalf of the appellant. The judge correctly found that the applicant was given three months to submit a new English language test certificate (from 31 July 2014 to 28 October 2014). He failed to do so and there is nothing in the correspondence from the solicitors to indicate to the respondent that there was a difficulty in taking the test because the appellant did not have his original passport.
14. Given the absence of any request for the original passport or further time after 25 October 2014, Mr Waheed was obliged to fall back on the submission that the appellant was set up to fail by the respondent's letter of 31 July 2014. However, there was no evidence before the judge that it was impossible to undertake the English language test without the original passport. Nor did the appellant do anything to assist his own cause by way of requesting further time or the return of the original passport or both. In those circumstances, I find it impossible to identify any substantive unfairness in the respondent's decision. It follows that the judge correctly found at paragraphs 15 and 18 of the decision that there was no breach of the common law duty of fairness.
15. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal did not involve the making of an error of law and its decision stands.

Decision

16. Consequently, I dismiss the appeal of the appellant.

Signed 

Date 20 May 2016

Judge Archer

Deputy Judge of the Upper Tribunal