IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/48645/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3 March 2016	**On 6 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

MOHSIN ALI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. M. Solaiman, J. Stifford Law Solicitors
For the Respondent: Mr. I. Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of the First-tier Tribunal Judge Atreya, promulgated on 19 August 2015, in which she dismissed the Appellant's appeal against the Respondent's decision to refuse to grant leave to remain as a Tier 4 (General) Student and to remove him from the United Kingdom.

2. Permission to appeal was granted on the basis that an arguable error of law had arisen in relation to the scope and application of the policy governing the dispatch of a 60 day letter by the Respondent.

3. The Appellant did not attend the hearing. I heard submissions from both representatives following which I reserved my decision.

Submissions

4. Mr. Solaiman submitted that the Respondent issued a 60 day letter to students whose visa was curtailed when the Tier 4 sponsor lost its licence, or when their visa application was pending when the Tier 4 sponsor lost its licence. However, there was no remedy when the Tier 4 sponsor withdrew the CAS. This was an issue of common law fairness. I was referred to paragraphs 44 to 52 of EK (Ivory Coast) [2014] EWCA Civ 1517.

5. Mr. Jarvis submitted that the grounds attacked the approach to the 60 day letter policy. He noted that the judge had accepted the Appellant's evidence regarding the dispute with his sponsor college (paragraph [27]). He submitted that the 60 day letter policy applied to certain kinds of students where the Secretary of State had withdrawn the CAS. The policy had later been extended to all students regardless of the amount of leave they had left. However, it did not apply to a situation where the CAS had been withdrawn by the sponsor college.

6. I was referred to the Respondent's guidance entitled "Patel Guidance Step-by-Step Guide", and paragraphs [38] and [39] of EK where the policy was set out. He submitted that EK held that a 60 day letter should be issued where the Respondent had done something which caused unfairness to the Appellant and therefore put him at a disadvantage as could not have known about it. All students had protection if they were not personally involved with the problems that caused the CAS to be withdrawn. The policy did not apply to someone in the Appellant's situation.

7. In relation to the submission regarding the common law duty which was on the Respondent, this could not succeed. He submitted that paragraphs [44] to [52] of EK on which the Appellant was relying were the minority decision of Lord Justice Floyd. The majority verdict was that of Lord Justice Sales and Lord Justice Briggs.

8. I was referred to the ratio of the decision in EK, paragraphs [33] to [37], [40] and [59]. He submitted that where the withdrawal of the CAS was due to an issue between the applicant and the sponsor college, and not due to the Secretary of State creating the situation where the CAS was withdrawn, an applicant was not entitled to a 60 day letter. He submitted that the Appellant could not succeed either under the policy or regarding a freestanding common law duty of fairness. In the Appellant's case the Secretary of State had done nothing to cause the withdrawal of the CAS.

The judge in the First-tier Tribunal at paragraph [32] was correct and had followed the ratio of the Court of Appeal.

9. In response Mr. Solaiman submitted that there was no remedy when a student made an application and the sponsor college withdrew the CAS. There was no fault on the part of the Appellant and he should not suffer. He referred me to paragraphs [34] and [49] of EK. In paragraph [34] it was suggested that the student take action against the college, but he questioned what would happen to the student's visa in the meantime, and submitted that this was not practical. He submitted that the appeal should be allowed and the Respondent directed to issue a 60 day letter in order that the Appellant could find a new Tier 4 sponsor.

Error of Law

10. In paragraph [32] of the decision the judge states:

"The appellant cannot in my view argue that there has been conspicuous unfairness caused to him by the Secretary of State's failure to give him 60 days grace to allow him to obtain a new CAS because there was no surrender or revocation of his sponsor's licence. The opportunity to have the 60 day grace period to submit a new CAS is only triggered in situations where the college an applicant was signed up to study at has had their licence surrendered or revoked. It does not apply to money disputes between educational institutions and individuals."

11. I have carefully considered the case of EK, in particular paragraphs [38], [39] and [59]. Paragraph [38], insofar as it is relevant, states:

"But that requirement was found to arise where there had been a change of position of which the Secretary of State was aware, and indeed which she had brought about, in circumstances in which the students were not themselves at fault in any way, but had been caught out by action taken by the Secretary of State in relation to which they had had no opportunity to protect themselves. In the present case, by contrast, the Secretary had no means of knowing why the Appellant's CAS letter had been withdrawn and was not responsible for its withdrawal, and the fair balance between the public interest in the due operation of the PBS regime and the individual interest of the Appellant was in favour of simple operation of the regime without further ado."

12. Paragraph [59] states:

"Secondly, like Sales LJ, I consider that a fairness principle which would lead to success for the applicant in the present case would make too great an inroad into the simplicity, predictability and relative speed of the PBS process, contrary to the thrust of the PBS regime as laid down by the Immigration Rules, particularly in a situation such as the present, where the Secretary of State bears no responsibility at all for the mistake or the

lack of communication of it, which led to the unfair outcome for the Appellant."

13. In paragraph [27] of the decision the judge finds that the Appellant has had a dispute with his sponsor college following which the college withdrew the CAS. It is not the Respondent who is responsible in any way for the fact that the Appellant's CAS has been withdrawn.

14. I find that the Appellant does not fall into the category of the kind of applicant to whom a 60 day letter is issued by the Respondent. This is because, for the reasons set out in the case of EK, the requirement to issue a 60 day letter arises where the reason that the CAS has been withdrawn is due to action taken by the Secretary of State. It does not apply to situations where the action has been taken by the college.

15. In paragraph [34] of EK Lord Justice Sales stated that there is a remedy for an applicant when a college withdraws a CAS letter, which is that he may have a contractual right of recourse against the college. In the present case the Appellant had a financial dispute with the college which led to the withdrawal of his CAS. The Secretary of State did nothing at all to influence the college withdrawing the CAS. The college is one of the Respondent's licensed Tier 4 sponsors, and the Respondent has not revoked her licence. The Appellant had a dispute with the college which was not due to any action taken by the Respondent. I find that EK is clear as to when the Respondent's obligation to issue a 60 day letter arises. It is equally clear from the Respondent's guidance. I find that the judge in paragraph [32] sets out the law correctly. She states that the policy does not apply as it is only triggered in situations where the sponsor licence has been surrendered or revoked, which does not apply inthe Appellant's case.

16. I find there is no error of law in the judge's analysis of the policy in paragraph [32].

17. In relation to the argument put forward by Mr. Solaiman at the hearing, that it was a breach of the common law duty of fairness, it is not clear that this was put as a freestanding argument at the appeal before the First-tier Tribunal, but rather that it followed on from the Respondent's failure to adhere to her policy. However, the Respondent acted in accordance with her policy, as was found by the judge. The decision of the First-tier Tribunal judge correctly followed EK when finding that the policy did not apply to the Appellant.

18. Further, the judge found in paragraph [32] that the Appellant could not argue that there had been conspicuous unfairness caused to him by the Secretary of State, so it is difficult to see how this submission can be made out. For reasons set out in EK, it is clear why the policy applies in that way that it does. It is only when the Secretary of State is at fault that any unfairness arises.

19. There is no indication that it was submitted at the hearing that the decision was unfair by reference anything other than the failure to apply the policy. I find that there is no error of law in the judge's decision to dismiss the appeal.

Notice of Decision

20. The decision of the First-tier Tribunal does not involve the making of an error of law and I do not set it aside.

21. The decision of the First-tier Tribunal stands.

No anonymity direction is made.

Signed Date 29 March 2016

Deputy Upper Tribunal Judge Chamberlain