



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/48888/2014

THE IMMIGRATION ACTS

Heard at Centre City Tower, Birmingham
On 29th February 2016

Decision & Reasons Promulgated
On 26th April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE FRENCH

Between

UMAR SIDDIQUE
(NO ANONYMITY ORDER MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan who appeals with permission the decision of Judge of the First-tier Tribunal Grimmatt promulgated on 1st June 2015 to dismiss his appeal against refusal to grant him further leave to remain as a student and to remove him to Pakistan.
2. The decision made by the Secretary of State was dated 5th September 2014. The application was refused on several grounds. In the light of the Appellant's history the Secretary of State indicated that she was not satisfied that he was a genuine student and had invited him to attend for interview on 22nd August 2014 but he had

failed to appear. The application was refused under paragraph 245ZX(o) of the Immigration Rules and also under paragraph 322(10), for failure to attend an interview. It was also the case that the Confirmation of Acceptance for Studies (CAS) upon which the Appellant had been relying had been cancelled immediately before the decision was made as the licence for the sponsoring college had been revoked.

3. In her decision Judge Grimmett found that the Appellant was not a credible witness and that he had received a letter inviting him for an interview and yet did not attend. She was also not satisfied that any unfairness had been worked in the circumstances of the case. The appeal was also dismissed with regard to Article 8, ECHR.
4. In the Grounds of Appeal it was contended that the judge had erred in her approach to fairness as the CAS, through no fault of the Appellant, had been withdrawn immediately before the decision. Reference was made to the guiding cases of **Thakur (PBS decision - common law fairness) Bangladesh [2011] UKUT 00151 (IAC)** and **Patel (revocation of sponsor licence - fairness) India [2011] UKUT 00211**. There was said to be unfairness also in the failure to give notice of decision earlier and that it had been irrational of the judge to consider that the interview letter had in fact been sent to the Appellant.
5. In granting permission to appeal Judge of the First-tier Tribunal Cruthers considered it arguable that the judge had not sufficiently engaged with the Appellant's argument that it had not been fair to refuse him leave to remain when his CAS had only been cancelled the day before the decision. However he commented (at paragraph 3 of the grant) that the Appellant should not take the grant as any indication that the appeal would ultimately be successful as apart from anything else the Appellant was faced with the judge's finding that he had failed to attend the interview.
6. At the hearing before me the Appellant was no longer represented. He explained that he did not have sufficient funds to instruct his solicitor to attend. He speaks good English and said he was happy to proceed. I explained the procedure to him. As the Appellant was not represented I invited Mr Mills to address me first so that the Appellant would understand the likely opposition to his appeal and could then respond. Mr Mills said that the policy of granting 60 days' further leave had been much misunderstood and only related to restricting leave to 60 days following curtailment if further leave remained. In the current case it was not the first time that the Appellant had been a student at a college where the licence had been revoked and that, he said, had caused doubts to arise as to whether the Appellant was indeed a genuine student. He had accordingly been invited to attend for interview. Fairness concerned the opportunity for the Appellant to be able to put his case but he had given up that opportunity by failing to attend the interview, of which the judge found that he had notice. The Appellant was faced with that firm finding. The challenge that the judge's decision on the matter of whether the Appellant had received notice of the interview appointment relied on irrationality but the judge's findings were clear and properly reasoned.

7. In response the Appellant said that if he was not a genuine student why had he sought admission in three different colleges and spent a lot of money on his education in this country. He questioned why the Home Office had not sent him a text or an e-mail concerning the interview which he maintained he had not known about. He said he had received the refusal letter, which was dated September of 2014 only in November.
8. Having heard those submissions and considered the documentation I came to the view that there was no material error of law in the decision of Judge Grimmett and I announced my decision at the hearing. The refusal was not based solely upon the Appellant not having a valid CAS. Before that stage was reached the Secretary of State relied on paragraph 245ZX(o) of the Rules, in which she questioned whether the Appellant was a genuine student and also his failure to attend interview in the light of which she refused the application under paragraph 322(10). The judge's findings with regard to those preliminary matters were clear. In her decision she recites at paragraphs 9 and 10 the Appellant's evidence as to his whereabouts at the relevant times and the Home Office records as to his address. Paragraph 11 reads as follows:

"I found the Appellant's evidence most unpersuasive as he changed his evidence in the course of a very short period of questioning from being at the house for one month to being at the house from November 2013 to about September 2014 and then changed it again to say that he moved out of the house in December 2014. When the inconsistencies were put to him he said that he was using both addresses and had post at both addresses but had asked the Home Office to send the post to []. I did not believe him and I was not satisfied that he was a credible witness."

In the following paragraph she stated that she was satisfied on the balance of probabilities that the invitation to the interview had indeed been sent and received. The Appellant had failed to attend.

9. In my judgment Judge Grimmett gave adequate and sustainable reasons for her finding that the Appellant had received notice of the interview and had failed to attend. She heard oral evidence which she was in a position to assess. She gave sufficient reasons to support her conclusion. The Secretary of State was clearly justified in refusing the application under paragraph 245ZX(o) and paragraph 322(10) of the Rules. Any apparent unfairness with regard to revocation of the CAS form without informing the Appellant could not have had any impact upon the outcome of the appeal to the First-tier Tribunal.
10. The appeal to this Tribunal is therefore dismissed.

Decision

11. There was no material error of law in the making of the decision by the First-tier Tribunal which therefore stands.

12. There was no application for an anonymity order. I saw no necessity for any such order and none is made.

Signed

Dated 04 March 2016

Deputy Upper Tribunal Judge French