Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/24158/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6 April 2017	**On 8 May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTER

Between

MD ROBIUL ISLAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Bhuiyan, Legal Representative
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of the First-tier Tribunal (Judge Graves) dismissing his appeal against the respondent's decision of 12 June 2015 refusing him further leave to remain as a Tier 4 (General) Student.

Background

2. The appellant is a citizen of Bangladesh born on 1 September 1989. As the judge commented the appellant's immigration history is not entirely clear from the appeal papers but on his own account he arrived in the UK on 9 September 2009 with leave to enter under Tier 4 and subsequent extensions were obtained in the same capacity. The decision under appeal refers to the appellant applying for further leave to remain on 20 December 2013 but the judge noted that the appellant's representatives gave differing dates of application, 30 December 2013 or 14 June 2014.

3. However, the precise dates of the appellant's arrival or of the application leading to the decision under appeal have no material bearing on the outcome of the appeal. It is common ground that the appellant's application was refused on 12 June 2015 for two reasons. Firstly, the CAS checking service revealed on 5 June 2015 that the CAS with the appellant's reference had been cancelled and secondly, the respondent was satisfied that a bank statement submitted in support of the application was false and accordingly the appellant failed to meet the requirements of para 245ZX(a) and para 322(1A).

4. The appellant appealed against this decision by grounds dated 23 June 2015. The grounds focused on the respondent's decision that the appellant had submitted a false bank account, asserting at para 15 that there was essentially a single issue in the appeal, whether the respondent's conclusions in respect of deception were unlawful/unreasonable in the circumstances.

The Hearing before the First-tier Tribunal

5. The appeal was heard on the basis of the documentary evidence on 30 July 2016. The judge reviewed the evidence, or perhaps more accurately in her view, the lack of evidence, about whether the appellant had submitted a false bank statement and found that the respondent had not discharged the burden of proof of demonstrating that the appellant had exercised deception [19]. However, she said that this did not assist the appellant as he had not demonstrated that he had sponsorship and so he could not meet the requirements under Tier 4 in any event. The burden of proof fell upon the appellant and he had not discharged it nor even disputed that he did not have a valid CAS [19]. The judge dismissed the appeal under the Immigration Rules and then went on to consider article 8 but for the reasons she gave, she was not satisfied that the article was engaged and, in any event, found in the alternative that the respondent's decision to refuse the application was proportionate to a legitimate public aim.

The Grounds and Submissions

6. The appellant applied for permission to appeal against this decision but his application was refused by the First-tier Tribunal in a decision dated 2 December 2016. On 17 January 2017 he renewed the application to the Upper Tribunal arguing in the grounds that his CAS had been cancelled due to his then sponsor's licence being revoked while his application was outstanding and that pursuant to the respondent's own policy guidance, he should have been granted a 60-day letter to find a new sponsor before his application was considered.

7. Permission to appeal was granted by the Upper Tribunal. When granting permission, UTJ Coker commented as follows:

> "3. It is arguable that the appellant should have benefitted from the respondent's policy and guidance but that any challenge to a failure on the part of the respondent to comply with her policy in these circumstances should be by way of judicial review. However, the findings of fact made by the First-tier Tribunal Judge in connection with deception may not have been able to be made in judicial review proceedings. It is arguable that although private life may not normally be engaged, in circumstances such as this, the interference in the appellant's private life given the lack of the 60-day period is sufficient to be a breach in the right to respect although it is difficult to see on what basis the loss of the 60-day period could arguably be a disproportionate interference given that it seems unlikely that there is a human right to a 60-day period. It may be that the proper course in such a case would be for the First-tier Tribunal Judge to make a declaration as regards compliance with the rules/policy whilst dismissing the appeal on human rights grounds."

8. At the hearing before me Mr Bhuiyan submitted that the inference that should be drawn from the wording used to describe the cancellation of the CAS was that the licence had been revoked because the college had lost its licence. He submitted that the respondent should in these circumstances have followed her policy of granting a 60-day period to enable the appellant to find another college. In respect of article 8 he submitted that the judge was entitled to take into account issues of fairness as the appellant would have been treated unfairly if he was wrongly deprived of the benefit of the policy.

9. Mr Bramble submitted that the phraseology used in the notice of decision was that the CAS "had been cancelled" and this was consistent with the college cancelling or withdrawing the appellant's CAS. He argued that the judge had considered all relevant issues and reached a decision properly open to her both under the Rules and article 8. Further, the policy had not been relied on before the First-tier Tribunal and no reference had been made to it in the appellant's original grounds of appeal.

Assessment of whether there is an Error of Law

10. I must consider whether the First-tier Tribunal erred in law such that its decision should be set aside. I am not satisfied that the judge did so err

for the following reasons. Firstly, the appellant seeks to rely on an issue which was not raised in the grounds of appeal to the First-tier Tribunal. It is clear from the appellant's grounds that no reliance was placed on the respondent's 60-day policy and also there was no reference to it in the appellant's witness statement dated 15 April 2016 which was before the judge. The fact that the appellant's CAS had been cancelled was clearly raised in the respondent's decision and, if the appellant had sought to raise issues about the cancellation of the CAS, he should have done so in his grounds or at the very least in the documents submitted in support of the appeal. So far as I can see from the appeal file, the policy relied on was faxed to the Tribunal on 17 January 2017 the same date as, and in all likelihood together with, the application for permission to appeal to the Upper Tribunal. I am not satisfied that it was open to the appellant to raise this ground at this stage of the proceedings. If the appellant wished to rely on this policy, he should have raised it in his original grounds of appeal and produced a copy of the policy for the judge at the hearing.

11. In any event, the judge was aware of the issue relating to the CAS. She said at [3] that the respondent had checked the sponsorship system on 5 June 2015 and the appellant's CAS had been cancelled by the sponsor. The judge dealt further with this ground of refusal in [18]–[20]. The judge repeated that the respondent said that the CAS had been cancelled or withdrawn by the sponsor and in [19] said that the appellant had not demonstrated that he had sponsorship and so could not meet the requirements of the Rules and that the burden of proof in this regard fell upon the appellant and he had not discharged it nor even disputed that he did not have a valid CAS.

12. I am satisfied that the judge was entitled to take this view. Further, there was nothing before the First-tier Tribunal to clarify whether the CAS had been cancelled by the college or whether the college had lost its sponsorship licence. There is still no such evidence. This is important as the policy only applies where the college's licence has been revoked leaving students in the position where they have to look for another course at a different college. Therefore, in any event, the appellant failed to show that he could bring himself within the terms of the policy and this is not a case where there was any obligation on the judge to take the matter any further. She had to determine the appeal on the basis of the evidence before her.

13. Finally, it is argued that the judge erred in her assessment of the appeal under article 8 and that issues of fairness in relation to the application of the policy should have been taken into account when assessing the extent of his private life and the proportionality of the decision. However, as I have already indicated, the appellant did not pursue the policy issue before the judge and there was no evidence to support a finding that the appellant could bring himself within the policy. The judge's findings on whether article 8 was engaged and, if so, whether the decision was proportionate were properly open to her for the reasons she has given in

[21]–[24]. Accordingly, the concerns expressed by UTJ Coker, when granting permission to appeal do not arise in the circumstances of this appeal. The First-tier Tribunal did not err in law and this appeal must be dismissed.

Decision

14. The First-tier Tribunal did not err in law and the decision of the First-tier Tribunal stands. No anonymity direction was made by the First-tier Tribunal

Signed H J E Latter Date: 3 May 2017

Deputy Upper Tribunal Judge Latter