**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: IA/27617/2015**

**THE IMMIGRATION ACTS**

| **Heard at Birmingham Employment Centre** | **Decision & Reasons Promulgated** |
|---|---|
| **On 13th October 2017** | **On 8th November 2017** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR ZAFAR IQBAL**
(ANONYMITY DIRECTION NOT MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No appearance
For the Respondent: Ms H Aboni (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge O. R. Williams, promulgated on 22nd February 2017, following a hearing at Manchester "On the Papers" on 23rd January 2017. In the determination, the judge allowed the appeal of the Appellant, whereupon the Respondent Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## The Appellant

2. The Appellant is a male, a citizen of Pakistan, who was born on 20th January 1972. He appealed against the decision of the Respondent Secretary of State dated 20th July 2015 refusing the Appellant leave to remain as a Tier 4 (General) Student Migrant under the general grounds paragraph 322(1A) and paragraph 320(7B) of the Immigration Rules. The Respondent held that the Appellant had used deception in submitting a TOEIC certificate in that the Appellant had used a proxy text taker to obtain examination results through deception. It is a feature of this case that the Appellant also did not have a valid CAS.

## The Judge's Decision

3. At the hearing before Judge Williams on 23rd January 2017 in Manchester, the Appellant was not in attendance, and the appeal was heard on request without a oral hearing. The judge applied the case of **SM and Qadir [2016] UKIAT (IAC)** and noted how the Secretary of State discharged the evidential burden of proving that the TOEIC certificates had been procured by dishonesty with respect to which only generic evidence had been submitted. Accordingly, the judge made three specific findings. First, that there was insufficient evidence that there was a proxy taker who took the Appellant's test at BIET TEC College.

4. Second that the document "ETS SELT the Source Data" stood in isolation. Although it stated that the Appellant's score was "invalid". It had not been annexed to a statement. Accordingly, the judge could not know who produced the data.

5. Third, the case had been considered on the papers, but was originally listed for an oral hearing. No request was made for an interpreter. The Appellant's statement was written in English. The judge held that "the declaration for his signature makes no mention of it being read back to him so that he understood it."

6. Accordingly, these "factors fortify my finding that the Appellant has a good understanding of English and would not need to act in a dishonest manner regarding his speaking test".

7. The judge then went on to consider Article 8 of the 1950 Convention and concluded that the Appellant had fallen into the category of those colleges who had lost sponsorship status through no fault of their own. It was not proportionate to allow the Appellant the opportunity to find a substitute college and to complete his course. The Appellant has to date not been able to have the opportunity to re-enrol at another institution. This is, "because he does not have valid leave to remain and so cannot be issued with a CAS" (paragraph 27).

8. The appeal was allowed on human rights grounds

## Grounds of Application

9. The grounds of application state that the judge erred because there had been a third party withdrawal of the Appellant's certificate, and accordingly the appeal should have been dismissed in any event. Furthermore, in allowing the appeal, the judge erred in allowing it on the basis of private life under Article 8.

10. There was no Rule 24 response from the Appellant.

**Submissions**

11. Ms Aboni, appearing on behalf of the Respondent, as Senior HOPO, submitted that the Appellant could not have succeeded in any event because, as the judge found (at paragraph 14) the Appellant "has conceded" could not satisfy the CAS requirements. When his application was made on 2nd August 2012, the Sponsor institution in Birmingham, the Institute of Education Training and Technology, went on to lose its sponsorship status. Therefore, the Appellant could not have succeeded on this basis in any event.

12. Second, insofar as the judge then allowed the appeal under Article 8, this was inadequately reasoned because there is no Article 8 right to education. The Appellant had been given enough time in any event to find another college and it was not enough to say that "it is proportionate to allow him an opportunity to find a substitute college and to complete his course" (paragraph 27). To state that the Appellant should have enough time "to complete his course" overlooks the fact that the Section 117B considerations in favour of the public interest regarding immigration control militates against any such general assertion.

**Error of Law**

13. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.

14. First, this is a case where the third party had withdrawn the certificate issued to the Appellant. In light of that, the third party plainly could not guarantee the validity of the information included in the certificate. That meant that the basis for the grant of further leave was removed as well. The judge gave insufficient consideration to the fact that the ETS, as a third party, had removed the Appellant's certificate.

15. Second, the Appellant himself did not have a valid CAS and so could not have succeeded under the Immigration Rules in the first place.

16. Third, given the aforesaid, the judge went on to allow the appeal on human rights grounds ruling that, "the Appellant has to date not been able to have the opportunity to re-enrol at another institution because he does not have valid leave to remain and so cannot be issued with a CAS" (paragraph 27). The Appellant did not have a Article 8 right to education in these circumstances. Given that the absence of a CAS and the

withdrawal by ETS of the certificate, no Article 8 basis had been set out by the Appellant such as to justify allowing the appeal on his private life grounds.

## Remaking the Decision

17. I have remade the decision on the basis of the findings of the original judge, the evidence before the judge, and the submissions that I have heard today. I am dismissing this appeal for the reasons that I have given above. The Appellant did not have a valid CAS. The ETS had declared his results to be invalid. No adequate explanations had been given by the Appellant such as to be recounted by the judge in the determination with respect to the relevant matters. The Appellant, accordingly, cannot succeed.

## Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is dismissed.

No anonymity direction is made.

Signed Dated

Deputy Upper Tribunal Judge Juss 31st October 2017