Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/28148/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 2 June 2017	**On 6 June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

IMTIYAZ KHAN
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Aslam (MA Consultants Ltd)
For the Respondent: Mr K Norton (Senior Presenting Officer)

DECISION AND REASONS

1. This is the appeal of Imtiyaz Khan against the decision of the First-tier Tribunal of 13 October 2016, dismissing his appeal brought against the decision to refuse his application for an extension of stay as a student, of 23 July 2015.

2. The immigration history supplied by the Respondent is that the Appellant entered the United Kingdom on 22 December 2009 and was granted leave until 3 May 2012 as a Tier 4 student, for the purpose of studying at the BC College of North West London. He applied for further leave to study at Stanfords College. That application was originally refused and an appeal brought against that decision, itself determined on 25 September 2012, requiring the Secretary of State

to retake the decision having previously unlawfully combined a decision on the variation application with a decision to set removal directions as an overstayer. There was then a lengthy delay whilst the Home Office reconsidered the case, leading to the decision giving rise to the present appeal, which is accordingly brought under the older "saved" provisions of the Nationality Immigration and Asylum Act 2002.

3. The application was refused because the Appellant

   (a) Had studied with a Sponsor other than that with respect to which his visa had been authorised, contrary to section 50 of the Borders, Citizenship and Immigration Act 2009;
   (b) Had not supplied a valid Certificate of Acceptance for Studies.

4. The Appellant's evidence before the First-tier Tribunal was that that he originally entered the UK in 2009 to study for an ACCA qualification, at BC College of North West London (BCCNWL). However when he sought to commence studies in January 2012, he learned that the institution had closed down. He did not report the fraud by the BCCNWL to the police or the Home Office, although he had lost £2,800 in fees.

5. He was advised by friends that the London School of Management Education (LSEM) was a suitable alternative Sponsor, and enrolled with LSEM in January 2012, with a view to studying for a Diploma in Business Management, and was told by a staff member there that the college would advise the Home Office of his change of Sponsor without the need for any further application from himself.

6. The First-tier Tribunal dismissed his appeal. It considered his explanation for switching college to lack credibility: he was unable to name the staff member who allegedly misdirected him, and had not taken the trouble to have the asserted advice put into written form. He referred in oral evidence to friends who had run into problems with their own student status in the UK and so clearly moved in circles where the Home Office system was understood; he had known how to consult the Home Office website in order to see whether his college retained its licence. In these circumstances he had failed to comply with a condition of his leave, and so fell foul of the general refusal reasons.

7. The First-tier Tribunal addressed the argument that the Appellant had been unlawfully disadvantaged by the Home Office failure to give him the benefit of the customary 60 days' grace to find a new Sponsor, that being a policy that should have been applied in his favour when the decision maker discovered that Stanfords College was no longer an authorised Sponsor. It concluded that there would have been no advantage to the Appellant in such a grant of leave, given the loss of Stanfords' licence.

8. The Upper Tribunal granted permission to appeal on 25 April 2017, on a single ground, *viz* that the refusal of the application without giving the Appellant an

opportunity to find another Sponsor was procedurally unfair. In so doing Judge Chapman expressly refused permission to appeal to argue that the approach below to credibility and to the alleged breach of conditions was unlawful.

9. Before me Mr Aslam argued that the failure to apply the "sixty days' grace" policy was so unfair as to cloud the decision on the appeal overall. The First-tier Tribunal had clearly thought that the breach of conditions resulted in a mandatory refusal of his application, and so had not considered whether it was appropriately held against the Appellant as a matter of discretion.

10. For the Respondent, Mr Norton submitted that the failure to apply the guidance was not a material error of law: the Appellant had not materially suffered given he had completed his studies by the time his application fell to be considered, and anyway the breach of conditions would inevitably have doomed his application once his explanation for how he came to change Sponsor without permission from the Home Office was rejected.

Findings and reasons

11. The only ground of appeal on which permission to appeal has been granted asserts that the decision making process was unfair. The relevant Home Office Guidance around the time of the Appellant's application in relation to applications for leave to remain under the Tier 4 Student category provides as follows:

> "Where the applicant was assigned a CAS by the sponsor before they were removed from the sponsor register, the applicant can apply to extend their leave. …
> 2. Where the application does not meet the requirements, refuse it.
> 3. Where it does meet the requirements, put it on hold. …
> 5. If the student's application has been held and the sponsor's licence is revoked, and the student has been a bona fide student and did not participate in the practices which led to the revocation, the options for action depend on the leave that they have:
> If they still have at least 60 days permission to stay remaining, you must curtail their leave so that it will expire once the period of 60 days has run out. During this 60 days they can seek a new CAS from a different sponsor and either vary their application, make a new application or leave the UK. If their permission to stay runs out whilst they are waiting for a decision on their application you must delay the refusal of their application for 60 days to allow them to seek a new CAS from a different sponsor and vary their leave."

12. Accordingly it is clear that the decision maker who considered his application in 2015 should have appreciated that, given the Appellant's leave had run out whilst he awaited a decision on the application, that he should have been given a further opportunity to find a different sponsor. The policy applies to a bona fide student who did not participate in the practices which led to the revocation. There is no suggestion that the Appellant did not genuinely intend to study in this country or that he was in any way associated with the reasons for the College's loss of licence.

13. The First-tier Tribunal erred in law in failing to find that this policy was applicable and that there was no relevant exception which might have deprived the Appellant of its benefit. However, that leaves the question as to whether the error was material.

14. This leads on to the other reason why the application was originally refused, the question of the Appellant's alleged breach of conditions. Section 3(1)(c) of the Immigration Act 1971 was amended by section 50 of the Borders, Citizenship and Immigration Act 2009 to alter the conditions that may be imposed on limited leave to enter or remain in the United Kingdom to specifically permit a condition restricting studies in the United Kingdom.

15. Rule 245ZY(c)(iv) provides for the period and conditions of leave that are to be granted to a Tier 4 student, in particular that the conditions include one of "no study" except at the institution that the Confirmation of Acceptance for Studies Checking Service or visa letter records as the migrant's Sponsor. The general refusal reasons then set out Rule 322(3) amongst the grounds upon which leave to remain should normally be refused: "failure to comply with any conditions attached to the grant of leave to enter or remain".

16. The Appellant's claim to the First-tier Tribunal was that discretion should have been exercised in his favour because the breach of conditions was innocent: he had been misled by defective advice from an ostensibly reliable source. However, the Judge who heard his oral evidence rejected the veracity of that explanation, on the basis that he moved in student circles who could be expected to be well familiar with the need to apply to the Home Office if changing Sponsor. There is nothing irrational or otherwise unlawful in that reasoning. In fact permission to appeal was refused on this point, but it seems fairer to the Appellant to address it, given that his case is now before the Upper Tribunal.

17. In these circumstances, I do not consider that the error of law below was a material one. The Appellant's appeal was doomed to fail once his explanation as to the circumstances behind his breach of conditions was rejected. The reality is that he has now spent nearly eight years in the United Kingdom on the basis of two relatively short proposed courses of study, and in that period has failed to find a Sponsor that is acceptable to the Home Office.

Decision:

The decision of the First-tier Tribunal did not contain a material error of law.
The appeal is dismissed.

Signed: Date: 2 June 2017
Deputy Upper Tribunal Judge Symes