



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/28958/2015

THE IMMIGRATION ACTS

Heard at Field House
On 20 April 2017

Decision & Reasons Promulgated
On 3 May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

AMER BIN SABER
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant in person
For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Moan promulgated on 19 October 2016 in which he dismissed the appeal of Mr Amer Bin Saber against a decision of the Secretary of State dated 4 August 2015 to refuse to vary leave to remain and to make removal directions pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006.
2. The Appellant is a citizen of India, born on 5 April 1986. He first entered the United Kingdom in October 2010 pursuant to a Tier 4 (General) Student visa valid until 25 November 2013. On 25 November 2013 he made an application for further leave to remain as a Tier 4 (General) Student Migrant. That application was supported in

particular by two documents. He provided a TOEIC certificate from Westbridge College in relation to his English language ability dated 6 November 2013. He also provided a Confirmation of Acceptance for Studies ('CAS') from Cromwell College of Information Technology and Management.

3. It was not until 4 August 2015 that the Secretary of State came to make a decision on the Appellant's application. The application was refused essentially for two reasons. First, with reference to paragraph 322(1A) of the Immigration Rules: the Respondent determined that the Appellant had used a proxy tester to obtain his TOEIC certificate from Westbridge College and therefore had submitted a false document. The application was also refused on the basis that when the Secretary of State came to check the register of Tier 4 Sponsors on 4 August 2015, Cromwell College was not listed: therefore the Secretary of State determined that the Appellant had not submitted a valid CAS.
4. The Appellant appealed to the IAC. His appeal was heard by First-tier Tribunal Judge Moan on 6 October 2016 in Birmingham. The Appellant appeared in person, as he has done before me today, although it is apparent from the documents on file that at various points in the appeal process he has had assistance from representatives preparing documentation and advancing arguments in writing.
5. The Appellant gave evidence before the First-tier Tribunal. Judge Moan determined that the reliance by the Secretary of State on paragraph 322(1A) was not appropriate. At paragraph 16 of the decision the Judge concluded that the Respondent had not established that the Appellant had submitted a fraudulent test certificate.
6. The Judge went on to consider the requirements of the Immigration Rules, in particular those of paragraph 245ZX, and noted that, no matter the reason, it was nonetheless the case that the Appellant's CAS was invalid: to that extent he could not succeed under the Immigration Rules.
7. I should pause to note in this regard that although the decision on the Appellant's application was made on 4 August 2015 - and therefore post-dated the amendments to Part 5 of the 2002 Act made by the Immigration Act 2014 on 6 April 2015 - because his application predated 20 October 2014 the pre-amendment appeal rights were preserved. Indeed this was recognised in the Secretary of State's 'reasons for refusal' letter. Those appeal rights included as an available ground of appeal that the decision is not in accordance with the law.
8. Having rejected the Appellant's appeal under the Immigration Rules the First-tier Tribunal Judge went on to say this at paragraph 22 of his Decision:

“In usual circumstances a student whose college’s licence has been revoked is given a grace period to allow the student to find a new college for his/her studies. This is Home Office policy as opposed to a legislative requirement. This was not afforded to the Appellant because of the fraud allegations. The Respondent may wish to consider as a matter of procedural fairness to the Appellant whether he ought to be given that grace period to find an alternative college. That is a matter for the Respondent.”

Having said that, the Judge went on to conclude the decision by dismissing the appeal under the Immigration Rules.

9. The focus of the challenge before the Upper Tribunal is in respect of the Judge’s observations at paragraph 22 of his Decision, and specifically that the circumstances described by the Judge were essentially covered by a line of authority, including in particular the case of **Patel (revocation of sponsor licence – fairness) India [2011] UKUT 00211 (IAC)** wherein it was established that the Tribunal had jurisdiction to allow an appeal because a decision taken on the basis of an invalid CAS - in circumstances where the Appellant would have been unaware of the invalidity of the CAS by the date of the Secretary of State’s decision and was not responsible for any of the circumstances leading to the removal of the Tier 4 sponsor from the Tier 4 Sponsor Register - on the basis that there was an absence of procedural fairness in determining the case without allowing an applicant the opportunity of a period of grace to rectify the invalidity of the CAS by obtaining an alternative CAS from a sponsor that was currently on the relevant register.
10. Permission to appeal was granted on this basis by Deputy Upper Tribunal Judge Davey on 1 March 2017. On 15 March 2017 the Secretary of State filed a Rule 24 response acknowledging the weight of the argument identified by Judge Davey in the grant of permission to appeal, and simply inviting the Tribunal to determine the appeal with a continuance hearing focusing on whether the Appellant’s failure to have a valid CAS was due to the loss of the sponsorship status of which the Appellant was innocent of any involvement, and to consider whether he should therefore benefit from the usual 60 day grace period to provide a new sponsoring letter.
11. The Appellant’s representatives (whom as I have indicated are not appearing today but have nonetheless assisted with documentation) have provided a brief response to the Rule 24 response by way of letter dated 10 April 2017. Amongst other things it is said *“at no time did the Respondent allege that the Sponsor was removed due to any wrongdoing by the Appellant”*.
12. Mr Kotas before me today helpfully and realistically does not seek to put the Secretary of State’s case any higher than the careful way it is expressed in the Rule 24 response, and takes no issue with what is asserted on the Appellant’s behalf with

regard to there being no allegation that he was involved in the reason for the removal of Cromwell College from the Sponsor Register.

13. In those circumstances it is now common ground before me that the decision of the First-tier Tribunal Judge should be set aside and the decision in the appeal re-made; further, that in re-making the decision the Tribunal should now acknowledge that the decision of the Secretary of State of 4 August 2015 was not in accordance with the law because of procedural unfairness in that the Appellant was not afforded an opportunity to rectify the invalidity of the CAS. I make that decision accordingly.
14. The effect is that the Appellant's application of 25 November 2013 remains outstanding before the Secretary of State, and it is to be anticipated that in the usual way the Secretary of State will communicate with the Appellant affording him a 60 day period of grace in which he may seek to obtain a further CAS, if that is his wish.

Notice of Decision

15. The decision of the First-tier Tribunal is set aside for error of law.
16. The decision in the appeal is re-made. The appeal is allowed to the limited extent that the decision was not in accordance with the law. The Appellant's application remains outstanding before the Secretary of State.
17. No anonymity direction is sought or made.

Signed:

Date: **29 April 2017**

Deputy Upper Tribunal Judge I A Lewis

TO THE RESPONDENT:
FEE AWARD

I have allowed the appeal and in the circumstances make a full fee award in the sum of £140.00.

Signed:

Date: **29 April 2017**

Deputy Upper Tribunal Judge I. A. Lewis