Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/34160/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9th November 2017	**On 28th November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MR NOUMAN SAJAWAL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance by or on behalf of the Appellant
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Pakistan, appealed to the First-tier Tribunal against a decision of the Secretary of State of 5th November 2015 to refuse to vary his leave to remain as a Tier 4 (General) Student Migrant under the points-based system. First-tier Tribunal Judge Owens dismissed the Appellant's appeal in a decision promulgated on 3rd March 2017. The Appellant was granted permission to appeal to this Tribunal by First-tier Tribunal Judge Grant-Hutchinson on 19th September 2017.

2. There was no appearance by or on behalf of the Appellant at the hearing in the Upper Tribunal. I noted that the notice of hearing was served on the

Appellant at the address set out in the application for permission to appeal and there had been no communication received from the Appellant to indicate that he could not attend. In these circumstances I considered it appropriate, in accordance with Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008, to proceed in the absence of the Appellant. I heard submissions from Mr Avery on behalf of the Secretary of State.

3. The background to this appeal is that the Appellant entered the UK with leave to enter as a student on 10th October 2010. His further application for leave to remain made on 21st December 2011 was refused on 8th March 2012 and an appeal against that was allowed on the basis that the decision was not in accordance with the law. The Upper Tribunal allowed the Secretary of State's appeal and remitted the matter to the First-tier Tribunal. At this point the Secretary of State raised an allegation of deception on the part of the Appellant in relation to the Appellant's ETS TOEIC English language certificates. The second appeal was allowed on the basis that the decision was not in accordance with the law on 5th June 2015. The Secretary of State subsequently issued a new refusal on 5th November 2015 which is the subject of this appeal.

4. First-tier Tribunal Judge Owen determined the appeal on the basis of the papers in accordance with the Appellant's request. The judge considered the evidence in relation to the allegation of deception and found that the Secretary of State had not discharged the legal burden of proof in respect of the general Grounds of Refusal and that paragraph 322(1A) of the Immigration Rules had not been made out as the judge was not satisfied that the English language testing certificate was obtained by using a proxy test taker [23]. Therefore the judge considered that this ground of refusal fell away and paragraph 245ZX(a) does not apply to this Appellant. There is no challenge to this part of the decision.

5. However the judge went on to consider the second issue raised in the Reasons for Refusal letter. This was that the CAS submitted with the Appellant's application had been assigned by London Educators Ltd, a Tier 4 Sponsor which, at the date of the decision on 5th November 2015, was not listed on the register. As such the Secretary of State considered that the Appellant was not in possession of a valid CAS and did not meet the requirements of the Rules on that basis. In his decision the judge noted that it had been argued in the skeleton argument submitted on behalf of the Appellant that the Appellant should have a further 60 days in which to obtain a new Sponsor. The judge considered the decision of the Upper Tribunal in **Patel (revocation of Sponsor licence – fairness) India [2011] UKUT 00211 (IAC)**. The judge also considered the latest Tier 4 policy guidance.

6. The judge noted at paragraph 26 that it is in the interests of fairness that, where an Appellant has a student application pending and has submitted a valid CAS with the application and the college loses its licence through no fault of the Appellant and where there are no other grounds of refusal, the Appellant should be afforded a 60 day grace period in which to make a fresh application. The judge considered this matter at paragraphs 27 and

28 of the decision. The judge stated that there was no evidence before him as to when the sponsorship licence was withdrawn although noted that it was not disputed by the Appellant that is this case. The judge noted that it appeared that from the decision of the First-tier Tribunal of 8th March 2012 that the result of the English language test had not been produced at the date of the application and it also appeared from the evidence before the judge that by June 2015 there was no longer a valid CAS. It was noted that at that point the Appellant indicated that he was anxious to pursue this appeal in order to refute the allegation of deception which would prevent him from making a further application for a protracted period of time. The judge highlighted that there was no evidence that the Respondent failed to act in accordance with their policy to give the Appellant a further 60 days in which to find a new college and submit a fresh application. The judge found that it was not sufficient for the Appellant to "simply assert that he should be given a further 60 days". In the judge's view the Appellant needed to demonstrate that the Respondent did not act fairly in respect of him and had failed to give him an opportunity to make a fresh application and that he was able to meet the remainder of the requirements of the Immigration Rules. The judge concluded that the Appellant had not submitted the necessary English language test certificates with the original application and had not addressed these issues in any detail in a statement or in the skeleton argument. In these circumstances the judge concluded that he was not persuaded on the evidence that the Respondent had failed to act fairly and rationally and have regard to her own policy [29].

7. It is contended in the Grounds of Appeal that the judge made an error in an approach to this issue. It is contended that the judge failed to follow the guidance in **Patel**. It is asserted that it is well established that where a Sponsor's licence is lost during the pendency of an application the applicant should be given "a reasonable opportunity to find a new Sponsor". It is contended that in this case given that the refusal under paragraph 322(1A) was not upheld the one remaining ground on which his application was refused was in connection with the sponsoring college's lost licence and therefore the Appellant plainly stood to benefit from a grant of 60 days leave to remain in accordance with the guidance in **Patel**. It is contended that the judge's reasoning in relation to the failure of the Appellant to produce the English language test certificate was deeply flawed as this was not a Ground for Refusal that was maintained in the refusal decision of 5th November 2015 (the decision the subject of the appeal). In any event it is contended that page 2 of the Reasons for Refusal letter makes reference to the English language certificates. It is submitted that the judge had committed a procedural error in dismissing the Appellant's appeal on grounds that were not included in the 5th November 2015 refusal letter without first giving the Appellant a chance to address these.

8. I accept that at page 2 of the Reasons for Refusal letter of 5th November 2015 it is clear that the Secretary of State had the English language certificates before her when assessing the Appellant's application.

Therefore I do not think that this issue is relevant to the determination of this appeal. In any event I do not consider that this is a material error.

9. The primary reason for the dismissal of the Appellant's appeal is in relation to the failure to produce a valid CAS. The refusal on that ground is set out at page 4 of the Reasons for Refusal letter and dealt with by the judge at paragraphs 27 and 28. The issue raised in **Patel** is whether the Appellant has an opportunity to address issues which could lead to refusal. It is clear that this ground applies where the only ground for refusal is the lack of validity of the CAS. This is because an Appellant could be notified for the first time in a Reasons for Refusal letter that their college is no longer on the register. In this case this was not the only reason for the refusal in November 2015.

10. At paragraph 27 the judge referred to the fact that by June 2015 there was no longer a valid CAS, however it appears that that was in connection with the failure to produce the English language test. The Grounds of Appeal to the Upper Tribunal are correct in their assertion that by the time of the decision on 5th November 2015 that appears to have no longer been an issue, the issue instead being that the Tier 4 Sponsor was no longer listed on the register.

11. In any event in my view this issue is resolved by the fact that in the Reasons for Refusal letter the Secretary of State gave another reason for refusal, the allegation of deception. Therefore throughout the appeal process, whilst the allegation of deception was live, the Appellant was aware that the issue of the Tier 4 Sponsor was also an issue and therefore had the opportunity to obtain a further CAS.

12. As the CAS issue was not the only basis for the refusal there was no requirement under **Patel** and the Tier 4 policy to give the Appellant 60 days in order to apply for a further CAS. Therefore the judge's conclusion was the Appellant had an opportunity to obtain a further CAS throughout the period in which this appeal was being pursued. In these circumstances the judge concluded that the Appellant did not require an extension by 60 days in order to obtain a fresh CAS [27-28].

13. In these circumstances it was open to the judge to conclude as he did that the Appellant had not demonstrated that the Respondent did not act fairly in respect of him and did not give an opportunity to make a fresh application.

14. Accordingly it is my view that the judge reached a decision open to him on the evidence. It was open to the judge to conclude that this Appellant did not require an extra 60 days in accordance with Home Office policy so that a fresh CAS could be submitted. I find that there is no material error in the First-tier Tribunal Judge's decision.

Notice of Decision

The decision of the First-tier Tribunal does not contain a material error of law.

The decision of the First-tier Tribunal shall stand.

No anonymity direction is made.

Signed Date: 27th November 2017

Deputy Upper Tribunal Judge Grimes