



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/17451/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 15 August 2018

Decision & Reasons Promulgated  
On 11 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR IQBAL HOSSAIN  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Saini, counsel instructed by Universal Solicitors

For the Respondent: Mr Tarlow, senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appeal came before me for hearing on 22 June 2018, when I found an error of law in the decision of First-tier Tribunal Judge Paul and adjourned the appeal for a resumed hearing. A copy of that decision and reasons promulgated on 2 July 2018 is appended.
2. At the hearing before the Upper Tribunal there was on file a response to directions from Ms Kiss, the Senior Presenting Officer at the error of law hearing in which at [5] [7] on the basis that the refusal decision of 1 December 2014 was not predicated solely

on the issue of the CAS, thus the 60 day policy would not have applied and Mr Saini's submission regarding historic injustice is simply mistaken. She further took the point that the Appellant's appeal rights having been exhausted on 7 February 2014, whilst as an overstayer he could at that time submit an out of time application within 28 days for consideration by the Home Office, that such an application could not legitimise an overstayer's immigration status and thus section 3C of the Immigration Act 1971 did not apply.

3. In relation to the first point, it is clear from the terms of the refusal of 1 December 2014 that although the application was refused on the basis of maintenance with regard to paragraph 245ZX(d) this was entirely due to the fact that no valid CAS had been submitted in support of the application and therefore the Home Office were unable to assess the level of funds that were required.
4. The only other issue raised in the refusal decision of 1 December 2014 was the fact the Appellant did not meet the requirements of paragraph 245ZX(l) because the start date of the course was more than 28 days after the expiry of previous leave. That last point is not contentious however and I find, having sought views from both parties, that the decision of 1 December 2014 is predicated on the issue of the CAS and as I found in the error of law decision, the reason the Appellant did not have a CAS is that the Sponsor licence from his college, the London College of Finance and Accounting had been revoked.

#### *Hearing*

5. At the hearing before me, the Appellant sought to rely on a brief written statement of 15 August 2018 in which he stated that he was unable to complete his studies because his college lost their licence; that he had only studied for 21 months at graduate level or above and if he were allowed to study further then he would wish to do so. Alternatively, he would use any period of 60 days' leave to seek out and obtain a Tier 2 sponsored job utilising the MBA that he obtained in the UK.
6. In response to questions from Mr Saini, the Appellant adopted his statement in relation to financial support. He accepted that there was no financial evidence before the First-tier Tribunal as recorded by the judge at [28] and that he had no documents to submit to the Tribunal today. His evidence was that he was still financially supported by his brother who regularly gives him money, for example £560 on 27 July and that he provides that or a similar amount on a monthly basis. He stated that he continued to live with his brother who has a full-time job with Boots the Chemist and earns over £18,000 a year.
7. The Appellant stated that he did have the requisite funds of over £9,000 at the time that he applied for his student visa and that these funds were held by NatWest Bank. He said that he submitted copies of his bank statements with the application. He was asked again about what he would have done if the Home Office had given him 60 days at the time the Sponsor licence had been withdrawn and the Appellant replied that he would have applied for a PhD, having done his MBA in finance, he would have

continued with this line of study. He stated in the alternative he would apply for a Tier 2 job, for example, a business development job in a company.

8. In response to my question as to the particular aspect of finance he would study the Appellant replied that he was interested in and had studied the small business sector, how funds are obtained, private equity for business start-ups and this is the area that he would study and that he has done projects in relation to Barclays Bank.
9. In cross-examination by Mr Tarlow, the Appellant stated that at the time he applied for further leave as a student he wanted to undertake a level 8 course i.e. the step above an MBA and obtain a diploma in strategic direction and leadership at the London College of Finance and Accounting. He stated that he had applied on 5 March 2014 but the course was due to start on 10 March 2014. He stated that the London College of Finance and Accounting is near the Hayes and Harlington Railway Station, which is where he was planning to study.
10. There was no further cross-examination or re-examination by Mr Saini.
11. In his submissions Mr Tarlow sought to rely on the refusal decision of both of 1 December 2014 and that which led to the current right of appeal dated 4 July 2016. He submitted that even if the Appellant had been given 60 days leave he may or may not have got the permission of the college to undertake a level 8 course. He further submitted that four years down the line that this would make no difference and there is no evidence that the Appellant would have asked for or been granted settlement or what he would have done and that his evidence on this was entirely speculative. Mr Tarlow asked that I uphold the refusal decision.
12. In his submissions Mr Saini submitted that this was of course a human rights appeal and that weight should be attached to the historic injustice in that the Appellant should have been given 60 days in order to obtain further sponsorship whether with a Tier 4 or a Tier 2 Sponsor. The question is not what the Appellant would have done with that opportunity but rather that the opportunity should have been given to him. He submitted that any overstaying did not illegitimise the Appellant's stay in the United Kingdom, that it was not an invalid application and that there was injustice in fact he was not given the opportunity under the Patel policy to apply for a further college place with a recognised Sponsor.
13. Mr Saini submitted that it would be fair for the Appellant to be granted a short period of leave in order to regularise his status and he agreed with the point I put to him which is that any historic injustice as a result of an error by the Home Office should in light of the decision of Mr Justice Lane in Charles be considered through the prism of proportionality.

#### *My Findings*

14. I find in light of the fact that the Respondent erroneously refused the Appellant's application of 5 March 2014 on 28 November 2014 on the basis that the Appellant's CAS had been revoked rather than that the Sponsor's licence had been withdrawn had

led to injustice, in that the policy pursuant to the decision in Patel (relocation of sponsor licence – fairness) [2011] UKUT 00211 (IAC) was not applied and the Appellant thus lost the opportunity to be given an extension of leave for 60 days in order to seek a new college with an extant licence.

15. Whilst there is an absence of evidence as to the Appellant's finances at that time or indeed now, that in my finding is not material in light of the history and bearing in mind that the refusal decision of 1 December 2014 was entirely down to the issue of the CAS. In these circumstances, in light of the guidance provided by the President of the Upper Tribunal in Charles (human rights appeal: scope) [2018] UKUT 00089 (IAC) I have balanced the public interest including the public interest considerations set out in Sections 117A to D of the NIAA 2002 against the historic injustice so called in light of the failure by the Respondent to apply his policy in Patel (op cit).
16. I take into consideration the fact that the Appellant is educated and has an MBA and would, if permitted to work, be in a position to seek viable employment. I accept his evidence that he is financially supported by his brother and thus does not have recourse to public funds. The Appellant gave evidence in English and has been residing in the United Kingdom continuously for thirteen years.
17. I have concluded in light of the Respondent's failure to apply his policy that it would be disproportionate to expect the Appellant to leave the United Kingdom particularly bearing in mind his long lawful residence from 14 June 2005 to 7 February 2014. The period of time thereafter was within 28 days, the Appellant having made his application of 5 March 2014 having become appeal rights exhausted on 7 February 2014.
18. Had the Appellant's leave been extended by virtue of 60 days by virtue of the *Patel* policy, then he may have been eligible for indefinite leave to remain on 14 June 2015. That is of course speculative, however, in light of the lengthy period of lawful leave along with the error by the Respondent in misapprehending that the CAS was withdrawn due to the revocation of the London College of Finance and Accounting's Sponsor licence rather than any action on the part of the Appellant, I find in all the circumstances that it would be disproportionate for the Appellant to now be expected to leave the UK.

### **Notice of Decision**

I allow the appeal on human rights grounds.

No anonymity direction is made.

Signed *Rebecca Chapman*

Date 7 September 2018

Deputy Upper Tribunal Judge Chapman



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/17451/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 22 June 2018

Decision & Reasons Promulgated

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR. IQBAL HOSSAIN  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr P Saini, Counsel instructed by Universal Solicitors

For the Respondent: Miss Z Kiss, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Bangladesh born on 17 February 1980. He arrived in the United Kingdom as a student on 25 June 2005 and was given subsequent grants of leave until 19 January 2013. The Appellant made an in time application for leave as a Tier 1 (Entrepreneur) but this application was refused on 30 May 2013. His appeal was dismissed on 3 December 2013 and he became appeal rights exhausted on 7 February 2014.

2. On 5 March 2014, the Appellant applied for leave to remain as a Tier 4 Migrant. This application was refused on 28 November 2014. On 28 January 2015 he applied for leave to remain on the basis of his family or private life. This application was rejected on 8 December 2015 for non-payment of a fee and non-compliance in relation to biometrics. The Appellant applied for leave outside the Rules and on 26 June 2015 varied his application to one on the basis of his long residence. That application was refused in a decision dated 4 July 2016.
3. The Appellant's appeal against that decision was heard on 22 November 2017. In a Decision and Reasons promulgated on 30 November 2017, First-tier Tribunal Judge Sullivan dismissed the appeal on the basis that the Appellant did not have a valid CAS at the date of the Tier 4 refusal on 28 November 2014, thus the allegation of historic injustice did not bite. The judge made the following findings at [22]:

*"22. ... In relation to the assertion that the Appellant should, in December 2014, have been granted 60 days leave in order to find another Tier 4 Sponsor I make the following findings:*

- a) This is not an appeal against the refusal of the Tier 4 application;*
- b) According to the Tier 4 refusal the CAS had been 'withdrawn' by the Sponsor;*
- c) The guidance to which my attention has been drawn refers to the grant of a 60 day period to regularise stay in situations where the Tier 4 Sponsor's licence has been revoked;*
- d) The guidance to which my attention has been drawn refers to the grant of a 60 day period to regularise stay in the context of an application to 'extend' leave in the United Kingdom;*
- e) The Appellant had no leave when he made his Tier 4 application.*

*23. As a consequence of those findings I have concluded that policy did not require the Respondent, in December 2014, to grant the Appellant 60 days leave to enable him to find a Tier 4 Sponsor. I find that the handling of the Tier 4 application is not an example of historic injustice sufficient either to render the Refusal unlawful or to have a material bearing on any Article 8 proportionality assessment."*

4. Permission to appeal was sought in time on the following grounds:-
  - (a) The judge was wrong in her view that the Appellant was not entitled to a period of 60 days leave or deemed leave within which to regularise his stay with respect to the decision on his application of 5 March 2014.
  - (b) That in the circumstances the applicant had been the victim of a historic injustice.
5. Permission to appeal was granted by First-tier Tribunal Judge Lambert in a decision dated 23 April 2018, on the basis that the grounds in relation to historic injustice and whether the Appellant had been entitled to 60 days deemed leave were arguable.

#### *Hearing*

6. At the hearing, Mr Saini appeared on behalf of the Appellant. He sought to rely not only on the relevant Home Office policies but produced a copy of the Appellant's CAS

(Confirmation of Acceptance for Studies) showing that it was issued on 28 February 2014, and a copy of the Home Office case record sheet which had been obtained by way of subject access which notes on 4 November 2014 that the Sponsor licence for the London College of Finance and Accounting had been revoked. There is also a further note of the same date, 4 November 2014, stating: “*Agreed decision to refuse. Case should be refused on withdrawn CAS only*”. Mr Saini submitted that there is a material difference in policy terms between the revocation of a Sponsor licence and the withdrawal of a CAS. Mr Saini submitted that the Tier 4 policy guidance at page 65 makes clear that where a Sponsor licence is revoked the affected applicant is given 60 days in order to find a new Sponsor and obtain a new CAS. He submitted there was no other reason why the Appellant’s application for leave as a Tier 4 migrant had been refused. There was a policy in force and the failure to apply the policy is contrary to the decision in Lumba [2011] UKSC 12.

7. Miss Kiss acknowledged that a period of 28 days as an overstayer is permissible and in light of the copy of the Home Office notes which clearly show that the Sponsor licence had been revoked, rather than as was also indicated and relied on by the Respondent that the CAS had been withdrawn. Whilst the judge was entitled to rely on what the Respondent’s position was, Miss Kiss accepted that the judge fell into error in so doing, given that there had been an error on the part of the Respondent.

*Notice of Decision*

8. In light of the evidence from the Respondent’s GCID notes relating to the Appellant which clearly shows that the Sponsor licence was revoked rather than the Appellant’s CAS being withdrawn, I find the judge erred materially in law in that her finding was based on a material misapprehension of the correct facts, those facts having been erroneously asserted by the Respondent.
9. I sought submissions from the parties as to how the appeal should be considered. Mr Saini submitted that this was an example of historic injustice. Had the Appellant correctly been given 60 days further leave he would have made a further application. Miss Kiss submitted that the Appellant had already had five years’ leave as a student and would not therefore have been eligible for further leave on that basis.
10. I concluded that it would be necessary to hear limited further evidence from the Appellant in light of my finding and submissions by both parties and that a further witness statement and evidence may assist in that respect, therefore I adjourn the appeal for a hearing before me. I make the following directions:-

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DIRECTIONS

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- (a) The hearing should be listed for a resumed hearing before the Upper Tribunal for one-and-a-half hours.
- (b) Any further evidence is to be submitted in accordance with Rule 15(2)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

(c) No anonymity direction is made.

Signed: *Rebecca Chapman*

Date: 27 June 2018

Deputy Upper Tribunal Judge Chapman