Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/33790/2015
IA/34815/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 30th April 2018	**On 15th May 2018**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

BEANT KAUR (FIRST APPELLANT)
RAJINDER SINGH GILL (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: No Appearance
For the Respondent: Mr. P. Durm, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of India and are a married couple. The case for the second appellant is dependent upon that of the first.

2. The first appellant applied for further leave to remain in the United Kingdom as a Tier 4 Migrant. The second applied for leave as her dependent. The applications were

refused on 9th April 2015. The essential reason for the refusal was that at the time of the decision no valid CAS was submitted to support the application or to gain the necessary number of points.

3. The first appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Meah on 28th February 2017. By a decision promulgated on 16th March 2017 those appeals were dismissed. Neither party was in fact present at the hearing, although the appellants had been expected, thus the matter was disposed of on the papers.

4. The judge disposed of the appeal in these terms at paragraph 15 of the decision:-

> "The facts in the first appellant's case are very clear. She was granted 60 days to arrange another CAS following difficulties with the sponsorship licence of her original educational institution so in all, the respondent has acted properly and fairly at all times and it is the appellant's own doing that she did not manage to secure a valid CAS during the extensive 60 day period granted to her for this purpose. In other words, the respondent has already exercised the discretion vested in her under her existing policies by granting the appellant a grace of 60 days and she is under no obligation to do more in this instance. No reasons were provided for the appellant not being able to secure another valid CAS."

5. Such is to fundamentally misunderstand the nature of the appeal which was in fact made. It has been the consistent contention of the first appellant that she did not in fact receive any 60 day period of leave and that the respondent was unfair in failing to afford her that relief.

6. A number of documents were forwarded on behalf of the appellants to the Tribunal to be presented before the Immigration Judge. Such were enclosed under cover of a letter from Maalik & Co dated 24th February 2017, such documents to constitute a skeleton argument and a detailed statement of the first appellant dated 23rd February 2017.

7. The statement of the first appellant makes it clear that at no stage did she receive the 60 day letter of 16th January 2015, and indeed in terms of the decision under challenge did not receive that until October. She relies upon the fact that her solicitor wrote on a number of occasions in August and September 2017 requesting the decision as evidence that she had not received it.

8. The bundle was not before the judge on 28th February 2017 but is contained within the Tribunal's file. If it had indeed been received before the date of the appeal it clearly would be an error in the process for it not to have been presented before the judge.

9. However, it is apparent from the respondent's bundle that the issue of the non-receipt of the letter of 16th January 2017 has been the subject of correspondence and would have been apparent to the Judge, had the judge read those papers.

10. The nature of the refusal of 9th April 2015 is also, in my view, instructive. It reads as follows:-

> "In order for points to be awarded, a Confirmation of Acceptance for Studies (CAS) must be assigned by a sponsor with a Tier 4 Sponsor Licence and that sponsor must still hold such a licence on the date that the student's application is determined. The CAS that you submitted with your application, with reference number E4G2XY7D18Z0K8, was assigned by Kent College of Business & Computing. The Tier 4 Sponsor Register was checked on 9 April 2015 and Kent College of Business & Computing were not listed as a Tier 4 Sponsor as of this date. On 16 January 2015 you were informed of this and allowed 60 days to obtain a new sponsor and CAS, however you have not provided a new CAS within that period.
>
> As such, you are not in possession of a valid CAS and so you have not met the requirements of the rules. Therefore, no points have been awarded for your CAS."

11. It is apparent from the correspondence within the respondent's bundle that two issues are raised. The first issue being whether or not the letter of 16th January 2015 was received, secondly, whether the decision of 9th April 2015 was received when it is claimed that it was.

12. In terms of the latter matter there has been considerable correspondence. The first appellant relies upon the letters from Maalik & Co dated 28th September 2015, 21st August 2015 and 17th August 2015, which are exhibited within the correspondence, which indicate that she did not receive the decision itself and hence having to chase it up. The respondent on the other hand seeks to rely on Royal Mail tracking evidence that the item was delivered from Haynes delivery office on 20th April 2015 to a previous representative of the appellants. That is a matter that can be followed up with further enquiries of that former representative if need be.

13. What is not seemingly dealt with in any detail is whether or not the letter of 16th January 2017 was issued or delivered. On the face of the matter the wording of the decision is somewhat strange. If the checking of whether or not a CAS was present was done on 9th April 2015, such begs the question as to why the letter of 16th January 2015 came to be written. The chronology seems to be somewhat twisted. In any event, the letter of 16th January is not within the file, nor that of Mr Durm so far as I can ascertain, and no evidence seemingly has been relied upon by the respondent to show service thereof.

14. It seems to me therefore that the Tribunal, having failed to grasp the essential matter raised by the first appellant, it cannot be said that there has been a fair hearing of the issue which has been raised. In those circumstances it seems to me that the fairest course is for the matter to be remitted to the First-tier Tribunal for that issue to be properly considered and findings made upon it. Had the appellants attended the hearing that omission or misunderstanding might have been readily put right. The first appellant by letter of 26th April 2018 indicated that she was not attending the hearing before the Upper Tribunal and relies upon her appeal grounds. Of course, it must be a matter for her and her partner as to whether or not they attend any

subsequent hearing before the First-tier Tribunal. It seems to me that it would be entirely sensible for them to do so. In the absence of clear documentation it may be that the Tribunal will need to hear evidence from her as to the non-receipt of the 60 day notice. Indeed it would be helpful to the Tribunal if she sets out what was her current position and circumstances in January, and had she received such a notice what alternative sponsorship could have been found. There is a paucity of documentation on this issue.

Notice of Decision

15. The decision of the First-tier Tribunal is set aside to be remade in light of all evidence then presented to it.

16. No anonymity direction is made.

Signed Date 4th May 2018

Upper Tribunal Judge King TD