

**THE IMMIGRATION ACTS**

Heard at : Field House  
On : 17<sup>th</sup> July 2013

Determination Promulgated  
On : 18<sup>th</sup> July 2013

Before

Upper Tribunal Judge McKee

Between

**ANISH ABRAHAM**

Appellant

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Arun Earnest of Kumar Associates  
For the Respondent: Miss Julie Isherwood of the Specialist Appeals Team

**DETERMINATION AND REASONS**

1. Mr Abraham has been in the United Kingdom since January 2010, when he was given leave to enter as a Tier 4 Migrant until 16<sup>th</sup> May 2012. Just in time before this leave expired, he applied to vary it, in order to study for a Diploma in Travel and Tourism Marketing at the London College of Social and Management Science. At K1 of the application form he set down the number of his Confirmation of Acceptance for Studies ('CAS'), while at Part L of the form he stated that the course fee of £2,000 had been paid in full, as could be seen from the CAS record. In order to satisfy the 'maintenance' requirement of the Rules, therefore, Mr Abraham just had to have £1,600 in his bank account for a 28-day period ending no earlier than 31 days before his application was lodged (the figure is misstated at L21 as £1,800). At L22 and L24 he confirmed that he had this money in his own name, as could be seen from

personal bank statements. Finally, at page 30 of the form, Mr Abraham listed the documents which he was enclosing with his application. These comprised : his passport, two photographs, two educational certificates, a CAS statement and a bank statement.

2. When the application came to be assessed by a caseworker in Sheffield, she could not find a valid CAS among the documents. She also thought that no CAS reference number had been submitted with the application. In that, she was mistaken, since the reference number had been written out at K1 of the application form. At all events, no points were awarded for Attributes, while ~ rather oddly ~ the caseworker said she was “unable” to assess whether Mr Abraham had sufficient Maintenance funds, because he had not provided a valid CAS with his application. The application was therefore refused on 9<sup>th</sup> January 2013, and a decision was also taken to remove Mr Abraham under section 47 of the 2006 Act.
3. With their notice of appeal to the First-tier Tribunal, Kumar Associates included a print-out of their client’s CAS, which had been assigned on 14<sup>th</sup> May 2012, just before the application was made, and in the grounds of appeal it was contended that a copy of this ‘CAS statement’ had been sent off with the application form. When the appeal came before Judge Hillis on 18<sup>th</sup> March 2013, he noted that the CAS reference number had indeed been written down on the application form, and that the respondent was in error in supposing that the CAS number had not been submitted with the application. He noted also that the grounds of appeal included the contention that a copy of the CAS statement had been enclosed with the application form, and he was surprised that the solicitors had not thought to submit a copy of the CAS with their notice of appeal. In his view, they had not rebutted the respondent’s contention that the CAS was not attached to the application. Judge Hillis therefore dismissed the appeal under the Immigration Rules and, as it had also been claimed that the refusal to vary the appellant’s leave was a breach of his Article 8 rights, he also dismissed the appeal in respect of the human rights claim.
4. Being under the impression that the ‘reconsideration’ procedure was still in force, Kumar Associates submitted ‘Grounds for Reconsideration’, in which they pointed out that Judge Hillis had failed to spot the CAS at pages 17-20 of the bundle containing the notice of appeal. Despite that, when Judge Pooler considered these grounds, he complained that they “*do not identify any documents which the judge failed to take into account*”, and concluded that no arguable error of law had been disclosed.
5. The same grounds (with the addition of a reference to K1 of the application form) were now submitted directly to the Upper Tribunal, and fared better before Upper Tribunal Judge Perkins, who granted permission to appeal to the Upper Tribunal. When the matter came before me today, I drew attention to the CAS, which did indeed appear at pages 17-20 of the bundle comprising the notice of appeal and accompanying documents. It is astonishing that it was overlooked by Judge Hillis and again by Judge Pooler, even when the Grounds for Reconsideration had pointed out where to find it. To overlook material evidence is certainly an error of law. Miss Isherwood, on the other hand, argued that the CAS was not admissible as evidence under section 85A of the 2002 Act, if it had not been included with the application, and was only adduced for the first time before the Tribunal. Although the Respondent’s Bundle in the present case had only reproduced the application form

and Mr Abraham's passport, Miss Isherwood was able to extract from the Home Office file all the documents which had accompanied the application. These comprised all the documents which had been listed at page 30 of the form, including the educational certificates and the bank statement, except for the CAS. It simply was not there.

6. For his part, Mr Earnest was sure that the CAS would have been sent off with the application form. It seems to me very likely that Kumar Associates, who completed the application form on their client's behalf, did have a copy of the CAS and did intend to send it. One of two things must have happened. Either the CAS got mislaid and was not put into the envelope posted to the Border Agency, or it was put into that envelope and got mislaid after reaching its destination in Sheffield. It was not before the caseworker who examined the application.
7. I cannot say which of these alternatives is the likelier. As it happens, Miss Isherwood was able to demonstrate that the appeal was doomed to failure in any event. Mr Earnest did not have a copy of the bank statement which accompanied the application form, but Miss Isherwood produced the original from the Home Office file. It runs from 5<sup>th</sup> April to 10<sup>th</sup> May 2012, and at no point does it come anywhere near the £1,600 which Mr Abraham needed to show for a 28-day period. If the caseworker in Sheffield had taken that point, instead of adopting the illogical argument that Mr Abraham scored 0 points for Maintenance because he scored 0 points for Attributes, this appeal would never have got off the ground. If Kumar Associates are competent immigration lawyers, they must have realised, when they enclosed the Halifax bank statement with the application, that the application would fall to be refused on Maintenance. Perhaps they were just hoping to buy time for their client.
8. The upshot is that any error of law made by the First-tier Tribunal is not material, as the appellant did not satisfy the requirements of Appendix C to the Immigration Rules, regardless of whether he satisfied Appendix A. Therefore the appeal was rightly dismissed under the Immigration Rules. Article 8 was not canvassed before me today, and rightly so, because the contention is completely hopeless. On the other hand, as Miss Isherwood readily accepted, the decision to remove Mr Abraham was, as *Ahmadi* [2013] EWCA Civ 512 has recently confirmed, invalid. It may be that Mr Abraham will wish to make representations to the Secretary of State, based on his current circumstances, before she makes another 'immigration decision' in his case.

## **DECISION**

The First-tier Tribunal did not make a material error of law in dismissing the appeal against the refusal to vary the appellant's leave, and the appeal to the Upper Tribunal against that decision is dismissed.

But the appeal is allowed to the limited extent that the concurrent decision to remove the appellant under section 47 of the Immigration, Asylum and Nationality Act 2006 is not in accordance with the law.

Appeal Number:

Richard McKee  
Judge of the Upper Tribunal

17<sup>th</sup> July 2013