Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/00223/2014

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court	**Determination Promulgated**
On 19th September 2014	**On 26th September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR ALMAS MATUBBER
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No legal representation
For the Respondent: Mr Richards (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Powell, promulgated on 28th April 2014, following a hearing at Newport on 22nd April 2014. In the determination, the judge dismissed the appeal of Almas Matubber. The Appellant subsequently applied for, and was

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granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Bangladesh, who was born on 18th April 1987. He appealed against the decision of the Respondent Secretary of State dated 5th December 2013 refusing to grant him leave to remain in the UK as a Tier 4 (General) Student Migrant.

The Appellant's Claim

3. The Appellant's claim was that he met the requirements of paragraph 245ZX of HC 395. In the alternative, he had private life rights in the UK. It is important to note that it is only possible to surmise the Grounds of Appeal because as the judge pointed out, "the Appellant's Grounds of Appeal do not seem to relate to this appeal and are otherwise generic in content" (para 19).

The Judge's Findings

4. The judge had regard to the fact that this was a "paper hearing" in that the Appellant had not elected to have an oral hearing before the judge. The judge noted that, "the Appellant has failed to prosecute his appeal. I do not know the basis on which he challenges the Respondent's decision" (para 20). In any event, insofar as the judge was able to discern any relevant fact at all, he concluded that the Appellant submitted a CAS assigned by Northam College but that "Northam College is not listed as a Tier 4 Sponsor" (para 17). The judge then appears to have fallen into error by concluding that "the Appellant was given a further 60 days to obtain a new Sponsor and submit a fresh CAS. He did not do so" (para 18). This error appears to have been a continuation of an error in the original refusal decision which also appears to have assumed that a period of 60 days was given to the Appellant. It does seem that none was. In any event, the judge then went on in paragraph 19 to observe that no sensible grounds had been submitted in the paper application before the judge. The appeal was dismissed.

Grounds of Application

5. The grounds of application state that the Appellant was entitled to 60 days to vary his application after his Sponsor college was removed from the list of designated colleges by the government. The Respondent failed to follow policy and made an unfair decision which the judge failed to assess. Moreover, the judge failed to assess the Appellant's Article 8 rights.

6. When the matter first came before a First-tier Tribunal Judge on a permission application, this was refused on 20th May 2014 on the basis that, although the judge appears to have fallen into error in concluding that 60 days had been given to the Appellant to find a new Sponsor after Northam College was removed from the register, the Appellant failed to

provide evidence to the judge about his appeal. This was the case both under the Immigration Rules and under Article 8. It was true that a period of 60 days had been given after the Appellant's original college, Quinton College, was removed. But no 60 day period was given with respect to Northam College.

7. On the renewal application, permission to appeal was granted by the Upper Tribunal on 10th July 2014. It was held that given that the Appellant had not been given a 60 day period, and it had wrongly been suggested that he had been, permission should be granted.

8. On 23rd July 2014, a Rule 24 response was entered to the effect that the Appellant had already been given 60 days in a letter dated 8th July 2013 after Quinton College was removed from the register. Given that he had already been the beneficiary of a 60 day period, there was no entitlement to provide him with further time to find another college.

Submissions

9. At the hearing before me on 19th September 2014, the Appellant himself was in attendance and he stated that he was entitled to a 60 day period to find another Sponsor college.

10. For his part, Mr Richards, appearing on behalf of the Respondent Secretary of State, stated that there is no entitlement to a 60 day period. He drew my attention to the case of **Patel (Tier 4 – No "60 Day Extension") India [2011] UKUT 00187**. The 60 day period referred to was a restriction rather than a definite extension of time. The Appellant already had 60 days after Quinton College was taken off the register. But in any event, the Appellant could not succeed in any case because he had failed to provide Grounds of Appeal that made any sense and had failed to prosecute his appeal. The judge could hardly have fallen into error if important facts were not placed before him.

11. In reply, the Appellant simply stated that he was entitled to 60 days.

No Error of Law

12. I am satisfied that the making of the decision by the judge does not involve the making of an error on a point of law (see Section 12(1) of **TCEA [2007]**) such that I should set aside the decision and re-make the decision. My reasons are as follows.

13. First, the judge cannot be said to have made an error of law if it is alleged that he made wrongful findings of fact, and the right facts were not put before him. Indeed, the wrong facts were put before him, in the form of Grounds of Appeal that related to a completely different matter, thereby arguably leading the judge astray. Insofar as there were any grounds, they were not only irrelevant, but generic. The judge referred to this as a matter of fact. Furthermore, the Appellant chose not to attend and to explain his position so as to put the facts before the judge himself.

Therefore, it can hardly be said that any error by the judge was a "material" error.

14. Second, it is worth pointing out that the Tribunal decision in **Patel (Tier 4 – No "60 day Extension") India [2011] UKUT 00187**, makes it clear that

> "Where a Sponsor's Tier 4 licence is withdrawn, the UKBA policy guidance as at November 2009 (at page 52) operates to restrict the remaining leave granted to 60 days where a student has more than six months of the original leave remaining. It has no effect on periods of less than six months."

15. If the Appellant was right in his contention, then it would be open to him to join colleges, one after the other, each successive one of which, was then removed from the register, thereby entitling him to one 60 day period after another, so as to eke out his presence in the UK.

16. This is plainly not the policy that the government has promulgated. In any event, this is irrelevant if the Appellant himself did not place proper grounds before the judge as I have indicated at the outset. There is no material error of law whatsoever.

Decision

17. There is no material error of law in the original judge's decision. The determination shall stand.

18. No anonymity order is made.

Signed Date

Deputy Upper Tribunal Judge Juss 26th September 2014