



IAC-AH-AR-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/03435/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 9 December 2014**

**Determination  
Promulgated**

**On 11 December 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVID TAYLOR**

**Between**

**SIMRANJEET SINGH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Mr C Avery, Home Office Presenting Officer

**DECISION AND REASONS**

1. Although the Secretary of State is, strictly, the appellant to this appeal, I have for the sake of conformity, described Mr Simranjeet Singh as the appellant, as he was in the First-tier Tribunal, and the Secretary of State as the respondent.
2. The Secretary of State has appealed, with permission, against the determination of First-tier Tribunal Judge Burns who, in a determination promulgated on 2 October 2014, allowed the appellant's appeal against

the respondent's refusal of his application for leave to remain as a Tier 4 (General) Student Migrant. At the request of the appellant, the appeal was decided by the First-tier Tribunal Judge on the papers and without an oral hearing.

3. The background to the appeal is the fact that the appellant's CAS from his college which was submitted with his application, was withdrawn by the sponsor before the respondent's decision was made on 23 December 2013. The application therefore had to be refused under the points-based system. The judge allowed the appeal on the grounds of fairness (relying on **Thakur [2011] UKUT 151** and **Patel [2011] UKUT 211**) and on the basis that the respondent had not followed her own policy of allowing the appellant 60 days to try to enrol at another college.
4. Permission to appeal was granted by First-tier Tribunal Judge Grant-Hutchison on 12 November 2014; the grounds submitted that the cases of **Thakur** and **Patel** should not apply when the CAS was withdrawn by the college and that the 60 days policy did not apply in this case because the licence of the college had not been withdrawn. Further, the policy only applied where the sponsor's licence had been withdrawn or where the appellant himself had been culpable.
5. Notice of the Upper Tribunal appeal hearing was sent to the appellant and to his solicitors on 17 November 2014. On 8 December 2014, the day before the hearing, the solicitors sent a fax to the Tribunal stating that neither they nor their client would be attending the appeal hearing and they relied on the documents submitted to the First-tier Tribunal. They gave no reasons and did not seek an adjournment.
6. Accordingly, in the absence of the appellant or his representatives, I heard submissions from Mr Avery on behalf of the respondent. He relied on the grounds and sought to distinguish the cases of **Thakur** and **Patel** on the basis that, in both those cases, the colleges in question had had their licences revoked and the appellants in those cases were not impacted in the reasons for revocation. Accordingly, in those cases, the 60 day policy should have been applied. In the present case the policy does not apply because the Secretary of State was not implicated in any way in the withdrawal of the appellant's CAS but that it would appear from the appellant's own statement that it was due to a disagreement between him and the college. There could be no question of unfairness in the present case. It must be emphasised that the college's licence had not been and has not been revoked.
7. I have considered carefully the documentary evidence of the appellant that was before the First-tier Tribunal. It is regrettable that he chose not to seek an oral hearing when he might have been able to explain what his disagreement was with the college or why they revoked his CAS. Similarly it is regrettable that he chose not to appear at the Upper Tribunal hearing. It must be stated forcefully that the burden of proof rests upon him. The

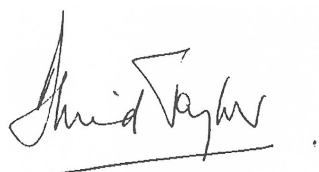
appellant's own statement dated 19 August 2014 which was before the First-tier Tribunal Judge does not attempt to explain why the CAS had been withdrawn. The appellant does not even hazard a guess. The only hint is possibly to be found in paragraph 5 of his statement where the appellant says that the college "had tried to contact me but were unable to reach me when I was due to attend lessons". It may well be that the appellant failed to attend the course. Nowhere in his statement does he say that he did attend the college course regularly or at all. I suspect that he would have said that was the case if he had been a genuine student. In summary, the appellant's statement can only be described as vague and economical in its detail.

8. It follows that, on the evidence before the First-tier Tribunal Judge, no question of fairness arose. In the absence of any evidence from the appellant (or the college) as to why the CAS was withdrawn, the Secretary of State was entitled to conclude that the withdrawal was due to a dispute between the appellant and the college. It was certainly not due to any action taken by the Secretary of State to withdraw or suspend the sponsor's licence.
9. The First-tier Tribunal Judge therefore made an error of law in allowing the appeal on the papers and the determination must be set aside.
10. In the absence of any clear evidence from the appellant and for the reasons I have set out above, I remake the decision by dismissing the appellant's appeal.

### **Notice of Decision**

11. The First-tier Tribunal determination contained an error of law and is set aside. I remake the decision by dismissing the appeal of the appellant, Mr Simranjeet Singh.
12. I make no direction for anonymity.
- 13 The appeal having been dismissed, I make no fee award.

Deputy Upper Tribunal Judge David Taylor  
11 December 2014

A handwritten signature in black ink, appearing to read 'David Taylor', with a horizontal line underneath it.