Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/25915/2013

THE IMMIGRATION ACTS

Heard at Newport	**Determination Promulgated**
On 29 July 2014	**On 1st Aug 2014**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

OGOCHUKWU NNAMDI OKPALA

Respondent

Representation:

For the Appellant: Mr A McVeety, Home Office Presenting Officer
For the Respondent: No Representative

DETERMINATION AND REASONS

1. The Secretary of State appeals against a decision of the First-tier Tribunal (Judge A D Baker) allowing the appellant's appeal against a refusal to extend his leave to remain as a Tier 4 Student under para 245ZX of the Immigration Rules (HC 395 as amended) and to remove him by way of directions under s.47 of the Immigration, Asylum and Nationality Act 2006.

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2. For convenience, I will refer to the parties as they appeared before the First-tier Tribunal.

The Background

3. The appellant is a citizen of Nigeria who was born on 15 October 1982. He arrived in the United Kingdom on 7 September 2007 and was granted leave to enter as a student until 30 October 2010. Thereafter, his leave was extended as a Tier 4 Student until 2 February 2013.

4. On 1 February 2013, the appellant applied for an extension of his leave as a Tier 4 Student. On 4 June 2013, the Secretary of State refused that application on the basis that the appellant's Confirmation of Acceptance of Studies (CAS) had been withdrawn by his sponsor, the University of the West of England. As he no longer possessed a valid CAS, the appellant was not entitled to the required points under Appendix A of the Rules and so was not entitled to leave under paragraph 245ZX of the Rules as a Tier 4 Student.

The First-tier Tribunal's Decision

5. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 13 February 2014, Judge A D Baker concluded that the appellant could not succeed under the Immigration Rules as he did not have a valid CAS. That decision is undoubtedly correct and is accepted by the appellant.

6. However, the Judge went on to allow the appeal as being "otherwise not in accordance with the law" because the Secretary of State had not contacted the appellant's sponsor in order to discover why his CAS had been withdrawn. The reason for the withdrawal was that, as a result of re-sitting examinations, a further period of study would have exceeded the five years maximum allowed for Tier 4 Students. The Judge's reasons are set out at paras 10-13 of the determination as follows:

> "10. The original letter from the University of the West of England remains on the court file identifying that he remains as a part-time student until June 2014 studying on his MSc. The material was not challenged as to its authenticity. In summary the respondent stated there was not a burden on the respondent to investigate or query when a CAS had been issued but withdrawn. The grounds of appeal are that the individual making the decision should have exercised discretion differently. The email at page 10 of the bundle makes plain that the only reason the university withdrew his CAS was because it appeared as if he had exceeded the five year time limit for the Tier 4 visas.
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> 11. Had the respondent been alert to this reason for the withdrawal of the CAS in other respects ultimately issued the respondent would have been reasonably bound to have made enquiries of the university and would have been able to consider the application for leave to remain which in effect was to complete his course by way of a resit which was not considered.

12. Under "other evidence" from information that was provided with the application it would have been obvious to the decision maker that the appellant was continuing on the same course that had begun on 20 September 2010 and was making academic progression, "visa extensions needed due to need to complete dissertation". The current CAS was assigned on 9 January 2013. Had enquiries been made by the respondent's decision maker it would have been open to the respondent to vary the leave, simply for the purpose of the extension needed for the appellant to submit his dissertation which he had originally failed, having passed every other part of the course.

13. Given that this information was contained in the CAS supplied to the respondent with the application I conclude that the decision was otherwise not in accordance with the law, the respondent failing to act reasonably in failing to contact the appellant and CAS provider for more information so that a reasoned decision could be made. The matter remains outstanding before the respondent to address the circumstances revealed by the application."

The Appeal to the Upper Tribunal

7. The Secretary of State sought permission to appeal to the Upper Tribunal on the basis that there was no obligation upon the Secretary of State to address any deficiency in a CAS with the sponsor institution before a decision was made. The grounds rely upon the decision of the Court of Appeal in Rahman v SSHD [2014] EWCA Civ 11 at [32].

8. On 8 April 2014 the First-tier Tribunal (Judge Cheales) granted the Secretary of State permission to appeal. Thus, the appeal came before me.

9. Mr McVeety, who represented the Secretary of State, submitted that the Judge's decision was inconsistent with the approach set out in Rahman at [32] which made clear that there was no obligation on the Secretary of State to provide an individual with an opportunity to rectify any deficiency in a CAS. Mr McVeety submitted that the Judge's finding that the Secretary of State's decision was not in accordance with the law was wrong in law and should be reversed.

10. Mr Okpala, who represented himself, explained that the CAS had been withdrawn because he would have exceeded the five years allowed under the Rules but he had not had an opportunity to obtain leave in order to complete his dissertation for his MSc at the University of the West of England. He informed me that he was due to complete his dissertation in January 2015.

11. Mr McVeety pointed out in his reply that even if the appellant was unsuccessful in this appeal he could make a fresh application for leave to complete his dissertation provided he did so within 28 days of his leave expiring when he became appeal rights exhausted and if he had a valid CAS for that purpose.

Discussion

12. It is common ground that the appellant could not meet the requirements of the Rules for a Tier 4 Student as his CAS was withdrawn. The basis upon which the Judge allowed the appeal was, in essence, that it was unfair or unreasonable for

the Secretary of State to fail to contact the appellant and the University of the West of England in order to ascertain the reason why the CAS had been withdrawn. Then, it is said, it would have been open to the Secretary of State to grant the appellant an extension solely for the purpose of submitting his dissertation which he had yet successfully to complete and submit. That reasoning is, however, inconsistent with what was said by the Court of Appeal in the decision of Rahman at [32]. Richards LJ (with whom Patten and Gloster LJJ agreed) said this:

> "I am not sure whether the appellant had an opportunity to check the CAS following its completion by the sponsor, and I note that part of the argument for the appellant is that he should not be penalised for the shortcomings of an institution of study over which he had no control. Nevertheless I agree with the tribunal that the situation here is very different from that in *Naved* and that fairness did not require the Secretary of State to give the appellant an opportunity to address any deficiency in the CAS. There was no question in this case of the Secretary of State obtaining additional information without reference to the applicant and relying on it to refuse the application. The Secretary of State simply applied the terms of the Immigration Rules themselves. Under the Rules it was the appellant who had the responsibility of ensuring that his application was supported by a CAS that meant the requirements laid down. If the CAS did not meet the requirements, it could not earn him an entitlement to points. If the deficiency in the CAS was the result of a mistake on the part of the sponsor (a point which, as I have said, was not even raised by the appellant in the tribunals below), it was a matter to be pursued between the appellant and the sponsor. There was no obligation on the Secretary of State to give the appellant an opportunity to seek an amendment to the CAS before a decision was taken on the application. Indeed the importance of all relevant information being provided as part of the application was underlined by the tribunal in *Naved* itself, in the passage I have quoted from paragraph 21 of the determination."

13. I accept Mr McVeety's submission that the Court of Appeal turned its face against any obligation being imposed upon the Secretary of State to seek further information in relation to a deficient CAS. Any deficiency in the CAS was a matter between th4e appellant and his sponsor alone. It was the student's obligation to submit a valid CAS. That reasoning is, in my judgement, equally applicable to this appeal. Here too it was the appellant's obligation to submit a valid CAS. Its withdrawal, and the basis for its withdrawal, was entirely a matter between him and the University of the West of England. There was no obligation on the Secretary of State imposed by a requirement to act reasonably or fairly to enquire why the appellant's CAS had been withdrawn.

14. Of course, Judge Baker did not have the benefit of the decision in Rahman which was decided after this appeal was heard. Nevertheless, her reasoning and decision cannot stand in the light of Rahman. Consequently, the Judge erred in law in allowing the appellant's appeal as being "otherwise not in accordance with the law" on the basis that there was an obligation to contact the University of the West of England (or the appellant) prior to making a decision on whether the appellant satisfied the requirements of the Rules including Appendix A as a Tier 4 Student.

Decision

15. The decision of the First-tier Tribunal to allow the appellant's appeal on the basis that the Secretary of State's decision was otherwise not in accordance with the law involved the making of an error of law. That decision cannot stand and is set aside.

16. It is accepted that the appellant cannot succeed under the Immigration Rules and, for the reasons I have given, the Secretary of State's decision was in accordance with the law.

17. I remake the decision dismissing the appellant's appeal on all grounds.

Signed

A Grubb
Judge of the Upper Tribunal

Date: