



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

Appeal Number: IA/28926/2013

THE IMMIGRATION ACTS

Heard at Field House

On 16th May 2014

**Determination
Promulgated**

On 24th June 2014

Before

Upper Tribunal Judge Chalkley

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR MUAHAMMAD IRFAN JAHANGIR

Respondent

Representation:

For the Appellant: Mr S Whitwell, a Senior Home Office Presenting Officer
For the Respondent: Mr S Kumar, Solicitor with Capital Solicitors

DETERMINATION AND REASONS

1. The appellant is the Secretary of State for the Home Department, who in this determination I shall refer to as “the claimant” to avoid confusion. The respondent is a national of Pakistan who was born on 31st March, 1983.
2. He first landed in the United Kingdom in possession of a visa that conferred leave to enter until 28th May, 2013, subject to a condition restricting employment and recourse to public funds. He made application on 28th May, 2013, to the claimant for leave to remain in the United

Kingdom as a Tier 4 (General) Student Migrant under the points-based system and for a biometric residence permit. That application was refused by the claimant on 28th June, 2013. The application was refused, because the claimant was not satisfied that the respondent had a valid CAS, because the reference number submitted with the application had been withdrawn by the sponsor.

3. The respondent appealed the claimant's decision to the First-tier Tribunal and his appeal was heard by First-tier Tribunal Judge C M Phillips at Taylor House on 27th February this year. In her determination, the First Tier Tribunal Judge refers to the grounds of appeal which submitted that the application should not have been refused, because the CAS number was valid when the respondent made application as that appears on the face of the CAS letter. The complaint was that the claimant failed to notify the respondent prior to the issue of the refusal decision, that the CAS had been withdrawn. The judge noted that the respondent claimed to have been in contact with his college repeatedly, but appeared to have been unable to obtain any explanation for the withdrawal of the CAS number.
4. In giving evidence to the judge the respondent claimed that he still did not know why the CAS was withdrawn and claimed that he feared he may have been the victim of a fraud by the college, which he believed was no longer a licensed sponsor.
5. On behalf of the respondent, submissions were made that Bradford Regional College, the college issuing the CAS letter, had been removed from the list of highly trusted sponsors. It was suggested that the claimant should have notified the respondent that the CAS had been withdrawn.
6. At paragraph 18 of her determination the judge said this:

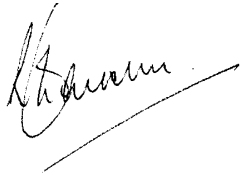
"I find that the [claimant], whilst stating that the CAS had been withdrawn by Bradford Regional College has not provided any reason for this withdrawal or any reason why the [respondent] was not informed and was not treated in the same way as an applicant who had submitted a CAS from a college whose sponsorship licence has been withdrawn."

The reason the judge said that is perhaps because she may have misunderstood the situation. The CAS was not withdrawn by the Secretary of State. The college in question, I am told, remains a highly trusted sponsor.

7. The judge went on to note that the sponsor had not sought to explain why the decision had been made without giving the respondent time to seek another CAS or sponsor and found that fairness required that the claimant should have contacted the respondent before refusing the application to give him the opportunity to respond and rectify the position with his CAS.
8. The judge allowed the appeal to the extent that she said that the respondent should be given a reasonable time being no less than 60 days to provide a valid CAS to the claimant, the application remaining before the claimant for decision that is in accordance with the law.

9. The claimant challenged the judge's determination and in the application explains that the Tier 4 application had been refused by the Secretary of State, because the CAS had been withdrawn by the sponsor and as such the respondent did not possess a valid CAS. As a result, he did not meet the requirements for the award of 30 points under Appendix A of the Immigration Rules. The challenge suggests that the withdrawal of the CAS was a matter between the respondent and the institution. It was not a matter over which the Secretary of State had any say or control. As a result, the grounds urged that the judge had made a misdirection.
10. The grounds also relied on the decision of the Court of Appeal in *Rahman* [2014] EWCA Civ 11, where there the court accepted that there was no duty on the Secretary of State to communicate with each and every where there was some deficiency in the CAS. If the deficiency in the CAS was a result of a mistake on the part of the sponsor, it was a matter to be pursued between the respondent and sponsor.
11. At paragraph 32 of the decision Lord Justice Richard said:

“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.”
12. Before me, Mr Whitwell relied on the grounds of appeal and on the decision of the Court of Appeal in *Rahman*, distinguishing *Naved*. He pointed out that the submission recorded by the judge at paragraph 12 of the determination to the effect that the Bradford Regional College had been removed from the list of highly trusted sponsors, had no basis in fact, because the Bradford College is still a highly trusted sponsor. The Secretary of State for the Home Department had no control over whether or not the CAS was withdrawn by the college, which was a matter for the college and the respondent.
13. Mr Kumar sought to suggest that *Rahman* did not apply. He relied on *Naved*.
14. I have concluded that the First-tier Tribunal Judge did erred in law in allowing the respondent's appeal to the extent that she did, namely that the respondent should be granted a reasonable time being no less than 60 days to provide a valid CAS to the Secretary of State. It was the responsibility of the respondent to provide a valid CAS letter from his sponsor with his application and that he failed to do. The issue of a valid CAS is not a matter over which the claimant has any responsibility. That was a matter solely for the college. The situation is not similar to one where a sponsor loses its licence; indeed, this college still holds a trusted sponsor licence.
15. I set aside the decision of First-tier Tribunal Judge Phillips. The respondent's appeal is dismissed.

A handwritten signature in black ink, appearing to read 'Chalkley', with a long horizontal stroke extending to the right.

Upper Tribunal Judge Chalkley