



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

Appeal Number: IA/32341/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 11 March 2014**

**Determination**

**Promulgated**

**On 1 May 2014**

.....

**Before**

**UPPER TRIBUNAL JUDGE CONWAY**

**Between**

**VIJENDER REDDY MALI  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Mr Tarlow

**DETERMINATION AND REASONS**

1. The Appellant is a citizen of India born in 1988. He appealed against a decision of the Secretary of State made on 11 July 2013 to refuse to vary leave to remain. Also, to remove by way of directions under s47 of the Immigration, Asylum and Nationality Act 2006.

2. The history is that the Appellant entered the UK on 14 February 2011 with entry clearance as a Tier 4 (General) Student. He was given leave to enter until 30 November 2012. On that date he made a combined application for leave to remain as a Tier 4 (General) Student Migrant under the points-based system and for a Biometric Residence Permit.
3. In refusing the application the Respondent noted that the Appellant had claimed 30 points under Appendix A of the Immigration Rules for a valid Confirmation of Acceptance for Studies (CAS) assigned by St John's College Ltd. However, the Respondent was not satisfied that he had a valid CAS because the Tier 4 Sponsor Register was checked but St John's College Ltd was not listed, its licence having been revoked on 19 February 2013 which meant that the CAS submitted was no longer valid. The Appellant had been written to on 17 April 2013 and informed of the revocation and that his CAS was no longer valid.
4. He was given 60 days to withdraw his application and submit a fresh application in a different category, leave the UK, or obtain a new Tier 4 Sponsor. Nothing was received from the Appellant.
5. Having failed to provide a valid CAS the Respondent was not satisfied that the Appellant had met the requirements of paragraph 245ZX and Appendix A and C of the Rules.
6. He appealed. In the Grounds of Appeal the Appellant said that following the revocation of the St John's College licence he joined the Postgraduate Diploma Hospitality and Tourism Management (NVQ Level 7) at Docklands College, Peckham, London. He sent the CAS letter and other documents to UKBA on 29 June 2013. Although the deadline for receipt was 30 June 2013, the documents were delivered to the Respondent on 1 July 2013. The Respondent failed to look at the original CAS issued by Docklands College. At the date of decision the CAS from the new Sponsor had reached UKBA. The Appellant thus satisfied paragraph 245ZX(c) and (d).
7. The case was decided, at the Appellant's request without a hearing 'on papers', in a determination promulgated by 10 January 2014 by Judge of the First-tier Tribunal Cheales.
8. In a brief determination the judge stated:
  - '4. *The Appellant was notified in a letter of 13 April 2013 that he had 60 days ending on 30 June 2012 to obtain a new CAS for a course of study with a fully licensed Tier 4 educational Sponsor. I do not have the CAS before me but attached to the bundle is a conditional letter from Docklands College dated 28 June 2013. The Appellant sent this letter on 29 June 2013 which was a Saturday. The document was therefore delivered on the Monday. Even if the Appellant had a valid CAS, he did not serve it within the relevant time. This part of the appeal is dismissed.'*

9. The judge went on to allow the appeal against removal under s47 as being not in accordance with the law.
10. He sought permission to appeal which was granted by a judge on 31 January 2014 who stated:
  2. *The grounds before the judge contended that the Appellant applied for an extension under Tier 4 on 29 November 2012. The TOEIC certificate dated 13 November 2013 which was produced as part of the extension showed that he met the English requirements. His college's licence was then revoked. He received a 60 day period ending 30 June 2013 to submit a valid CAS. He sent the "new" CAS to the UKBA on 29 June 2013 through the Royal Mail Special Delivery and enclosed the receipt. The receipt showed that it was received by the Respondent on 1 July 2013. The CAS should have been considered as unconditional.*
  3. *It is arguable that a valid CAS was served within the relevant time, as it was posted prior to 30 June 2013. The grounds are arguable.'*
11. At the error of law hearing before me there was no appearance by or behalf of the Appellant. At 11.00 I asked my clerk to contact the nominated representative, Primarc Solicitors. They indicated that they had told the Appellant of the date of the hearing but there had been no response from him and no further contact.
12. Being satisfied that notice of the hearing had been given and that there was no satisfactory explanation for his non-appearance or response I proceeded with the hearing in absence.
13. I would add that later that day subsequent to the hearing I received a fax timed 14.41 from the solicitors stating that the Appellant was 'unable to attend the court hearing today as he is unwell'. I was asked to 'decide this matter in his absence'.
14. I heard submissions from Mr Tarlow.
15. I can deal with this matter in brief. Mr Tarlow did not seek to argue that the letter from Docklands College was not submitted in time. The due date was 30 June 2013. It was submitted on 29 June 2013. I agreed. In concluding otherwise the judge erred.
16. However, it was not a material error. I agreed with Mr Tarlow's further submission that the letter from Docklands College was not a valid CAS. It is dated 28 June 2013 and headed 'Conditional letter Tier 4 - Adult Student'. There is no CAS number. It states that the Appellant 'has been conditionally accepted on the following full-time course as detailed below'

(viz PG Diploma in Hospitality, Tourism and Management). At the end it states 'Note: CAS will be generated upon successful submission of CEFR Level B2 confirmation for all the modules from an UKBA Approved Centre'.

17. As the grounds seeking permission acknowledge, the letter issued by Docklands College was conditional on the English language requirement being met. A TOEIC certificate was, it is claimed, later provided. It is not before me but it may well be that such was so and that it satisfies the English language requirement. The problem for the Appellant is that the certificate is, by his own account, dated 13 November 2013 and is thus subsequent to the Respondent's decision made on 11 July 2013.
18. Under s85A '*Matters to be considered: new evidence: exceptions*' this a PBS case, thus Exception 2 applies. s85A(4) states:

*'Where Exception 2 applies the Tribunal may consider evidence adduced by the applicant only if it:*

  - (a) *was submitted in support of, and at the time of making, the application to which the immigration decision related.'*
19. As the TOEIC certificate was submitted not with the application, and indeed post decision, it was not admissible.
20. Although the First-tier Tribunal erred in not finding that the letter was submitted in time, as that letter was conditional and not a valid CAS the appeal could not succeed. The Tribunal's error was not material.

### **Decision**

The decision of the First-tier Tribunal against the refusal to vary leave does not show a material error of law and that decision dismissing the appeal stands.

Signed

Date

Upper Tribunal Judge Conway