



IAC-TH-WYL-V1

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

Appeal Number: IA/53842/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 28 October 2014**

**Decision & Reasons
Promulgated
On 5 October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

**MR MUHAMMAD UMER FAROOQ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

Representation:

For the Appellant: Mr S Kandola, Home Office Presenting Officer
For the Respondent: No appearance

DECISION AND REASONS

1. This is a respondent's appeal but I shall henceforth refer to the parties in the original terms detailed in the determination of Judge of the First-tier Tribunal J J Maxwell following a hearing on 16 July 2014 and within his resulting determination promulgated on 22 July 2014.
2. The appellant is a citizen of Pakistan who applied for leave to remain in the United Kingdom. His application was refused on the same date a

decision was made to remove him by way of removal directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. He appealed that decision and following the above-mentioned hearing at Hatton Cross Judge Maxwell, amongst other things, allowed the appellant's appeal directing that it be remitted to the respondent to be decided in accordance with the law.

3. On 16 September 2014 Judge of the First-tier Tribunal Foudy gave her reasons for granting the respondent permission to appeal. They are:

“1. The respondent seeks permission to appeal, in time, against the decision of the First-tier Tribunal Judge Maxwell, who in a determination promulgated on 22 July 2014, allowed his appeal against the refusal of his application for leave to remain.

2. The grounds of appeal complained that in relation to the absence of a CAS, the judge failed to follow **Rahman [2014] EWCA Civ 1**.

3. An arguable error of law is disclosed by the application.”

4. Thus the appeal came before me today. There was no appearance by either the appellant or indeed anyone instructed to represent him. I was satisfied that he had been properly served with notice of the proceedings and accordingly proceeded to deal with the hearing.

5. Mr Kandola submitted that the judge made a material misdirection in law and failed to apply binding case law. The appellant's Tier 4 application was refused because the CAS had been withdrawn by the sponsor and as such the appellant did not possess a valid CAS. Consequently the appellant could not meet the requirements for 30 points to be awarded under Appendix A of the Immigration Rules. The issue of whether a CAS is withdrawn or is invalid is a matter between the appellant and the relevant institution. The CAS system is not under the control of the respondent and he submitted that it was not for the respondent to seek further information as to why the CAS is withdrawn. In particular he relied on the authority of **Rahman** which is wrongly cited by the judge granting permission to appeal. The citation is **Md Mahamudur Rahman v SSHD [2014] EWCA Civ 11**. He further submitted that any prejudice to the appellant would only arise where it was the Secretary of State herself who, for example, revoked a CAS. That is not the position here where, he emphasised, the CAS was withdrawn by the appellant's own sponsor.

6. I have considered the authority of **Rahman**. Paragraph 32 states:

“32. 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 met the requirements laid down. If the CAS did not meet those 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.”

7. This is an appeal where the judge has materially erred in finding that the appellant’s application was treated unfairly by the respondent and in relying on the authorities of **Patel (revocation of sponsor licence - fairness) India [2011] UKUT 00211 (IAC)** and **Thakur (PBS decision - common law fairness) Bangladesh [2011] UKUT 00151 (IAC)**.
8. The judge has failed to take account of the fact that here it was the appellant’s own sponsor who withdrew the CAS thereby rendering the appellant unable to meet the requirements for 30 points to be awarded under Appendix A of the Immigration Rules. In so doing the judge has materially erred as asserted by the respondent. In simplistic terms this was an appellant who could not meet the requirements of the Immigration Rules and accordingly his appeal should have been dismissed.
9. For all these reasons I set aside the First-tier Tribunal’s decision.

Decision

10. I re-make the decision in the appeal by dismissing it.

No anonymity direction is made.

Signed

Date 4 November 2014.

Deputy Upper Tribunal Judge Appleyard
TO THE RESPONDENT
FEE AWARD

I make no fee award on the basis that the appellant's appeal has been dismissed.

Signed

Date 4 November 2014.

Deputy Upper Tribunal Judge Appleyard