



IAC-FH-AR-V1

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

Appeal Number: IA/01822/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 15 July 2015**

**Decision & Reasons Promulgated
On 16 July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MARK HILL QC

Between

**AHSAN KHAN
(NO ANONYMITY DIRECTION)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Khan, Britain Solicitors

For the Respondent: Mr D Clark, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought on behalf of Ahsan Khan in relation to a decision of the First-tier Tribunal which was promulgated on 10 December 2014. This matter has been before the Upper Tribunal on an earlier occasion. It was heard by Lord Mathews sitting as an Upper Tribunal Judge and Deputy Upper Tribunal Judge G MacDonald on 13 May 2015 and adjourned it, giving permission to the appellant to lodge further grounds of appeal within fourteen days, which has been done together with a bundle of supporting documentation.

2. Paragraph 3 of the Upper Tribunal's Decision and Reasons reads as follows:

"Before us Mr Khan moved to amend the grounds to include in the grounds that there was a material error in fact amounting to an error in law based on a misconception or misrepresentation of the evidence. We have looked at the note of proceedings and it may be there is some room for that suggestion but we are unable to see at the moment whether there is an error or not. If Mr Khan's position is correct then it would appear that the appellant was not involved in the withdrawal of the CAS. If the position was that he did not pay the fees demanded by the college then he would have been involved in the withdrawal of the CAS and the guidance on which Mr Khan relies would not avail him."

3. The amended grounds of appeal were served under cover of a letter from Britain Solicitors dated 9 June 2015 and they set out a history dealing with a number of CAS letters issued by several institutions. The only one which is material for today is that issued by Bradford Regional College in support of an application to the Home Office for Tier 4 leave to remain. The grounds of appeal seek to set out a chronology suggesting that a dispute in relation to the charging of additional fees arose only after the CAS had been withdrawn and it was on that basis that Mr Khan was to advance the appeal before me today. But I must bear fully in mind that grounds of appeal like skeleton arguments do not contain evidence but merely comment on evidence by lawyers.
4. The question for me is whether there is evidence that this appellant was involved in the withdrawal of the CAS. Mr Clark has taken me to the Determination and Reasons of the First-tier Tribunal and I note that Mr Khan represented the appellant on that occasion as well. He has very fairly and very properly made forceful representations but has not crossed the line of giving evidence himself as to what may or may not have been said on that occasion.
5. The salient part of that earlier determination appears at paragraph 12 which reads as follows:

"The appellant said in response to supplementary questions that he had originally entered the country on 16 January. He referred to the CAS issued by Bradford Regional College. Subsequently the institution demanded extra fees which he did not pay. The CAS was then withdrawn."
6. It is clear to me that that is a recital by the First-tier Tribunal Judge of the oral testimony given by the appellant in response to supplementary questions. That response makes it abundantly plain that the appellant was indeed involved, on his own admission, in an issue concerning fees which led to the withdrawal of the CAS. That being so, the observations made in relation to the policy guidance, which is the only substantive error of law advanced by the appellant, can have no application.
7. Mr Khan with great politeness and great perseverance has sought to inform me that those four lines do not accurately reflect what was said. It is in contradistinction with paragraph 5 of the witness statement dated 20

February signed by the Appellant with a statement of truth and placed before the First-tier Tribunal on that occasion. It is far from unusual for witnesses to give oral testimony which diverges from and contradicts what is in a witness statement. Often what is said orally is more persuasive because it is focused on responding to particular questions raised either by legal representatives or by the Tribunal of its own motion.

8. When this matter was last before the Upper Tribunal it is clear that Mr Khan sought to maintain this challenge on the Appellant's behalf. That is why he was granted the indulgence of an adjournment to put in revised grounds of appeal and any evidence which would be sufficient to make good the assertions he was going to make.
9. Regrettably, and it would appear by oversight rather than by design, Mr Khan has not provided his own note of the earlier proceedings nor has the conventional step been taken to obtain a transcript of what was heard by the First-tier Tribunal Judge. In the absence of either an authenticated note or ideally a transcript I have to take at face value what is recorded in that determination. The manuscript record of the First-tier Tribunal was examined by the Upper Tribunal on the last occasion and was found to be equivocal hence the adjournment for a definitive answer.
10. Mr Khan invited me to adjourn the matter once again which was objected to by Mr Clark and rightly so. There needs to be finality in litigation. Mr Khan was afforded the opportunity by the previous Upper Tribunal panel which heard the matter on 13 May and has not provided the material by which I can explore whether there was an error of fact leading to an error of law sufficient to found an appeal in this instance.
11. That being so, the appeal even as reconstituted by Mr Khan in his amended grounds must fail *in limine*. It does not even get off the ground because of the clear evidence derived from the appellant himself that he was indeed involved in the withdrawal of the CAS, which completely undermines the amended grounds.
12. I bear fully in mind the need to do fairness to the parties: that means fairness to the Home Secretary as much as to the appellant. One adjournment has already been granted to enable a putative appeal to be made good and the appellant through his representative has not taken advantage of that. The interests of justice militate against a further adjournment.
13. Having dismissed the appeal on this preliminary and fundamental point I am not required to examine the policy guidance and other guidance in relation to Tier 4 claimants which may or may not have been applicable at the time and I make no determination in relation to thereto.
14. This appeal is therefore dismissed.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed N Mark Hill

Date 15 July 2015

Deputy Upper Tribunal Judge Hill QC