



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/03878/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at: Field House
On: 10th April 2015**

**Determination
Promulgated
On: 20th April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

**Abdul Qudoos
(no anonymity direction made)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Ehtesham-Khan, Pride Solicitors
For the Respondent: Mr Kandola, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Pakistan date of birth 20th March 1983. He has permission¹ to appeal against the decision of the First-tier Tribunal (Judge Amin) to issue a Rule 9 Notice.
2. The Appellant had previously had leave to enter the United Kingdom as a Tier 4 Migrant. On the 30th May 2013, the day his leave expired, he made an application to extend it. That was rejected as invalid by the Respondent on the grounds that the Appellant had not signed the

¹ Permission granted by Designated First-tier Tribunal Judge Garratt on the 29th January 2015

form. The Appellant was then without leave and was unable to supply a valid CAS. For that reason a subsequent application, made on the 27th June 2013, was also rejected. The 'offer letter' he had supplied from his then Tier 4 Sponsor was not a CAS.

3. The Respondent maintained that the Appellant had no right of appeal since the decision to refuse him leave to remain as a Tier 4 Migrant, made on the 27th September 2013, was not an immigration decision attracting a right of appeal. The matter came before Judge Amin, who in her Rule 9 decision found for the Respondent.
4. Before me Mr Kandola agreed that the decision must be set aside. It was an error of law to issue a Rule 9 decision following a hearing. It should have been a determination, guided by the principles in Basnet (validity of application- respondent) [2012] UKUT 00113 (IAC). Mr Kandola further accepted that on the 20th March 2014 directions were issued that the Respondent provide evidence to show that the original application had been properly rejected as invalid, and that these directions had not been complied with. The Respondent had failed to discharge the Basnet burden of proof, and in those circumstances the Appellant should have been granted a right of appeal. I agree and the decision of the First-tier Tribunal is therefore set aside.
5. For his part Mr Ehtesham-Khan accepted that the decision appealed could not succeed under the Immigration Rules since the Appellant had not submitted a valid CAS. He did however submit that the decision was 'not in accordance with the law' for a failure on the Respondent's part to exercise her discretion and act fairly.
6. I agree. The Respondent now accepts that the application made in time in May 2013 should not have been rejected as invalid. Had that application been accepted the Appellant's leave would not have lapsed and he would not now be in the position of having no CAS. The Appellant wishes to continue his studies by taking up an offer of a place to study for a PhD at the University of Leeds. He cannot accept that offer without leave, and having no leave he is unable to obtain a CAS. Mr Ehtesham-Khan submits that in the circumstances the appropriate solution to this 'catch 22' situation would be for the Respondent to issue the Appellant with a Certificate of Application which would enable him to make a new application to the University of Leeds, obtain a CAS and make a valid application for further leave to remain as a Tier 4 Migrant. That is entirely a matter for the Respondent, but I agree that following her failure to show that the original application was invalid she should now exercise her discretion and consider whether she wishes to issue the Certificate of Application.

Decisions

7. The decision of the First-tier Tribunal contains an error of law and it is set aside.

8. The decision in the appeal is re-made as follows:

“The appeal is dismissed under the Immigration Rules.

The appeal is allowed as not in accordance with the law”

9. I make no direction for anonymity because neither party has requested one and on the facts I do not consider such an order to be necessary.

Deputy Upper Tribunal Judge Bruce
10th April

2015