



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

Appeal Number: IA/10688/2014

THE IMMIGRATION ACTS

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

**Decision and
Promulgated
On 15th April 2015**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**MS LEA JUNIO BELANDRES
(NO ANONYMITY DIRECTION MADE)**

Appellant

And

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mrs White, Counsel instructed by Blakeells

For the Respondent: Ms Savage, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Ms Lea Junio Belandres date of birth 31st January 1977, is a citizen of the Philippines. Having considered all the circumstances I do not make an anonymity direction.
2. This is an appeal by the Appellant against the determination of First-tier Tribunal Judge Wiseman promulgated on 30th October 2014, whereby the judge dismissed the Appellant's appeal against the decisions of the Respondent dated 29th January 2014. The decisions by the Respondent

were to refuse the Appellant further leave to remain in the UK as a student and to remove the Appellant from the UK to the Philippines.

3. By decision made on the 16th February 2015 leave to appeal against the judgment of Judge Wiseman was granted. Thus the matter appears before me to determine in the first instance whether or not there is an error of law in the original determination.
4. The Appellant had entered the UK in August 2008 as a student. Her leave as a student had been extended at various times and in August 2013 the Appellant had made application for further leave supported by a CAS from the Overseas Nurses Training Organisation Ltd [ONTOL].
5. At the time, when the application was made, ONTOL were on the register of approved sponsors. However prior to a decision being taken ONTOL were removed from the list of approved sponsors. Without giving the Appellant an opportunity to find an alternative sponsor the immigration decisions were taken by the Respondent refusing the Appellant's application.
6. I draw attention to the cases of Patel (Revocation of a Sponsor's Licence-fairness) India [2011] UKUT 211 (IAC) and Kaur (Patel-fairness - respondent's policy) [2013] UKUT 344 (IAC). The cases make clear that, where through no fault or involvement of an applicant a college loses its licence to act as a sponsor, under common law principles of fairness, an applicant should be given the opportunity to find a new sponsor and obtain a fresh CAS to support the application, provided that is the only ground for refusing an application.
7. In assessing what is fair in the circumstances all of the facts have to be looked at.
8. Before me there is a skeleton argument setting out that the Appellant could not apply for a fresh CAS without her passport, which, it appears, had been submitted in support of the original application. Likewise with a refusal decision made against her she would not be able to get a fresh CAS.
9. I have a great deal of sympathy with the judge dealing with this matter at first instance. The Appellant did not attend and the judge had limited evidence before him about the passport and no reasoned explanation as to why the Appellant had not applied for a fresh CAS. In the absence of the Appellant it may be understandable why the judge made the decision that he did.
10. However given the case law identified above this is clearly a case caught by the principles set out.
11. At the outset of the hearing before me the representative for the respondent conceded that there was an error of law. It was accepted that in line with the case law the Appeal should be allowed as the decision is

not in accordance with the case law set out and breaches the Common law duty of fairness. It was accepted that in line with the case law there was an application before the respondent awaiting a lawful decision. Whilst that application is outstanding the Appellant should have 60 days to submit all necessary documents to support the application including a valid CAS from a registered sponsor.

12. I have considered whether it is appropriate to make a fee award. Having regard to all the circumstances I do not make a fee award.

Decision

13. I find that there is a material error of law in the determination and substitute the following decision:-

The appeal is allowed to the extent that there is an application outstanding before the respondent which requires a lawful decision.

14. I make no fee award

Signed

Date **15th April 2015**

Deputy Upper Tribunal Judge McClure