IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/25413/2014

THE IMMIGRATION ACTS

Heard at Field House
On 7 September 2015

Decision & Reasons Promulgated
On 12 October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

AATIQA YASIN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Pennington- Benton, instructed by Denning Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Pakistan born on 17 June 1989 and she appeals against the decision of the respondent dated 3 June 2014 to refuse her leave to remain as a Tier 4 (General) Student and to remove her by way of directions under Section 47 of the Immigration and Asylum Act 2006.

© CROWN COPYRIGHT 2015

2. The appellant's application was refused under paragraph 245ZC(c) of the Immigration Rules with reference to paragraph 117B of Appendix A because she was not in possession of a valid CAS.

3. The background to the appeal was that on 20 March 2014 the Secretary of State wrote to the appellant at the address given on her application form to state that the appellant's Confirmation of Acceptance for Studies for a Diploma in Health Care and Management at 14 Stars (London) (trading as European College for Higher Education) was no longer valid because on 18 March 2014 the Home Office made the decision to revoke the licence, making the CAS no longer valid and therefore her application fell to be refused. Before they made the final decision in line with the Rules and guidance they suspended consideration of her application for a period of 60 calendar days. During this time it was open to her to withdraw that application and submit a fresh application.

4. On 19 May 2015 Lea Valley Immigration Services on behalf of the appellant wrote to the appellant stating that they had received a letter from the Home Office dated 20 March 2014 but that they had checked the Tier 4 Sponsor Register List where it showed the college was on it and therefore the appellant did not need alternative sponsor. The Home Office was requested to consider the appellant's application with the same CAS.

5. Nonetheless on 3 June 2014 the Home Office wrote to the appellant refusing her application further to Paragraph 245ZX(c) of the Immigration Rules and making a decision to remove her further to the Rules set out above.

6. She appealed against that decision and the matter was heard on 16 February 2015 by Judge of the First-tier Tribunal Davda who refused the appeal. The judge set out that the appellant had received the letter from the Home Office giving her 60 days to find another college but noted that her college had told her they would be getting their licence back and told her to reapply using the same CAS. To get another CAS it would "cost her another £2,000, a lot of money". As she was told by the college to use the same CAS so before the expiry of 60 days she again applied to the Home Office on 19 May 2014 when the college, she states, was on the list but the college lost its sponsorship on 3 June 2014.

7. The appellant made an application for permission to appeal on the basis that the judge misdirected herself and failed to apply the principle of procedural fairness to grant the appellant 60 days after the Tier 4 (General) Student Migrant sponsorship licence of the college was revoked on 3 June 2014. The sponsor's name was on the Home Office list on 19 May 2014 when the appellant applied for leave to remain as a Tier 4 student in the UK. There was an error on the facts further to **R (Iran) [2005] EWCA Civ 902** and the error effectively undermined the reasoning relied upon which was an error of law.

8. The appellant must be given fair notice of the withdrawal of the sponsorship licence and the evidence was considered in isolation when it should be assessed in the

round. The appellant had suffered not because of her mistake but because the college confirmed their status as an existing Tier 4 Sponsor.

9. The respondent did not argue that the college was *not* on the list on 19 May 2014 when the sponsorship issued the appellant's CAS letter. The relevant date was 19 May 2014 not 3 June 2014. The judge had failed to apply the law properly and materially and erred to interpreter the evidence contrary to the judgments such as **Gudi (Sudan) 2012 UKUT 41**. It was arguable that the judge had taken too harsh a view of the appellant's evidence and she failed to take into account the letter from Md Jalal Uddin of Lea Valley Immigration Services Limited that "They had checked the Tier 4 Sponsor Register of the appellant college which appeared on the list".

10. In effect the judge did not take into account the relevant facts.

11. At the hearing Mr Pennington-Benton submitted that there was no exact date as to the restoration of the college's licence and he would have expected to have seen in the refusal letter a query over the submission made by the solicitors as to the restoration of the college to the list as a sponsor. He accepted that the CAS was not resurrected but then stated that some other remedial steps should have been taken to find out what was going on. He stated that the facts of this case were different from those in **EK (Ivory Coast) [2014] EWCA Civ 1517** as in this case the college had been restored to the role and there were principles of fairness. In this case there was only one college not two colleges as in the case of the **EK (Ivory Coast)**. Here there was only one CAS number. He pointed out that at paragraph 14 of the refusal letter the representatives for the Home Office at the First-tier Tribunal hearing did not challenge the fact that the college was restored to the licensing list. In this case the Secretary of State was "playing around with the sponsorship licence and the curtailment should never have been made". He was not submitting that the Secretary of State's had behaved conspicuously unfairly but there should have been some investigation into the matter.

12. Secondly, he submitted that the judge had not dealt with the evidence and he referred me to paragraph 16 and noted that it was the appellant's case that in line with the letter of 20 March 2014 the appellant had looked at the list of licensed Tier 4 educational sponsors and seen that her college had been reinstated.

13. Mr Tufan submitted that the conclusions of the judge were not irrational and there was nothing unreasonable set out. He stated that even if one assumed for a moment that the college had become relisted, a CAS cannot be resurrected as it is no longer valid. The case was simply that the appellant needed to get a new CAS.

14. In conclusion, I am not persuaded that there is an error of law in this decision. The appellant was notified by the Home Office on 20 March 2014 that the CAS she had submitted with her outstanding application was no longer valid. She was warned that her application would fall to be refused and yet she failed to present any new CAS. From the documents it is clear that the CAS is dated 27 February 2014 and it has a CAS number. That CAS number was set out in the letter of 20 March 2014 from

the Secretary of State to have been invalidated. I do not accept the submission by Mr Pennington-Benton to the effect that the Home Office was "playing around with the sponsorship licensing". There was no evidence that this college had been reinstated to the list and the point made by Mr Tufan is correct that the particular CAS submitted by the appellant was itself invalid at the date of decision (and indeed clearly by 20th March 2014). The judge set out her reasoning at paragraphs 15 and 16 and in particular at [16] stated the following:

> "I have considered the evidence and the submissions by both parties. On the basis of evidence, such as is before me: (1) the appellant had her legal advisors in place right from the start (2) The Home Office had made the appellant aware as early as 20 March 2014 that they had made a decision to revoke the college licence and provided her with their letter, information leaflet and certified copy of her passport and invited her to view the list of licensed Tier 4 educational sponsors (3) There is no evidence of the appellant having spoken to the college or that they had advised her to reapply using the same CAS but there is no corroborative evidence (4) There is also no evidence as to her efforts if any, to find another sponsor between 20/3/2014 and her repeat application on 19/05/2014 (5) There is no evidence other than a letter from Md Jalal Uddin of Lea Valley Immigration Services Limited that they have checked the Tier 4 Sponsor Register and that her college appears on that list (6) It has been stated on behalf of the appellant that she did make enquiry with the Bradford College but again there is no evidence of that or what other colleges she has approached since then."

15. The Home Office had given the appellant more than adequate warning to obtain a new CAS. I can see that a solicitor's letter from Md Jalal Uddin was taken into account by the judge in relation to the restoration of the college to the sponsor register and she rejected this on the basis that it was insufficient.

16. **EK (Ivory Coast)** makes it very clear at paragraph 29 as follows:

> "As Sullivan LJ observed in Alam, it is an inherent feature of the PBS that it "puts a premium on predictability and certainty at the expense of discretion" (para. [35]). Later, at para. [45], he said:
>
> > "… I endorse the view expressed by the Upper Tribunal in **Shahzad [Shahzad (s 85A: commencement)** [2012] UKUT 81 (IAC] (paragraph 49) that there is no unfairness in the requirement in the PBS that an applicant must submit with his application all of the evidence necessary to demonstrate compliance with the rule under which he seeks leave. The Immigration Rules, the Policy Guidance and the prescribed application form all make it clear that the prescribed documents must be submitted with the application, and if they are not the application will be rejected. The price of securing consistency and predictability is a lack of flexibility that may well result in "hard" decisions in individual cases, but that is not a justification for imposing an obligation on the Secretary of State to conduct a preliminary check of all applications to see whether they are accompanied by all of the specified documents, to contact applicants where this is not the case, and to give them an opportunity to supply the missing documents. Imposing such an obligation would not only have significant resource implications, it would also extend the time taken by the decision making process, contrary to the policy underlying the introduction of the PBS."

17. I am not persuaded that there was any error on the facts further to **R (Iran) [2005].** There no evidence from either party as to the date the college was removed but there was certainly no firm evidence of any reinstatement. There was evdience that the CAS which accompanied the application was considered by the respondent to be invalid. The appellant was warned that this college would be removed and the argument is an attempt to shift the burden to validate the CAS onto the Home Office when it had very clearly set out that it was no longer valid. I do not accept that the principle in **Goudey** assists the appellant or that the rules of procedural fairness have been breached. The appellant does not need to be warned again when the college actually loses its licence. She had already been warned that the licence was due to be removed and that her CAS was invalid. There may have only been only one college involved in this instance compared with **EK (Ivory Coast)** but the approach by the respondent does not reveal any unfairness. The appellant was warned, however, that the college licence was to be removed and further told on 20th March 2014 that the CAS presented was invalid. As at the date of decision the appellant could not comply with the Immigration Rules. The appellant was warned in a letter of 20th March 2014 that the CAS, presented with her application, was invalid and her application was suspended for 60 days. There was no firm evidence with regards the erroneous advice from the college and the letter from the solicitors did not and does not now assist the appellant.

18. In the letter of 20th March 2014 the respondent clearly stated

> '... if you fail to submit a new, valid CAS togtether with the required supporting documentation within this 60 day period then your application will be considered on the basis of the information currently available and will therefore fall to be refused'.

19. The appellant made no attempt to seek a further valid CAS. The appellant chose to act, not on the warning of the respondent, but on the advice of the college that she could continue to use an invalidated CAS. This is not a case in which the Secretary of State was proceeding on the basis of ignorance of whether there was a withdrawal or the reason of the withdrawal of the CAS. The Secretary of State had spelt out to the appellant that the CAS had been invalidated. Put simply the appellant failed to submit a valid CAS with her application.

Notice of Decision

20. I therefore find that there is no error of law and the decision shall stand.

Signed Date

Deputy Upper Tribunal Judge Rimington