



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

Appeal Number: IA/36476/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 6 November 2014**

**Determination
Promulgated
On 11 February 2015**

Before

UPPER TRIBUNAL JUDGE DEANS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR GHULAM MURTAZA

Respondent

Representation:

For the Appellant: Mr P Armstrong, Home Office Presenting Officer

For the Respondent: Ms M Niama, Berkshire Law Chamber

DETERMINATION AND REASONS

- 1) This is an appeal by the Secretary of State with permission against a decision by Judge of the First-tier Tribunal Devittie. The respondent, Mr Ghulam Murtaza, is hereinafter referred to "the claimant".
- 2) The claimant is a national of Pakistan and was born on 25 April 1974. On 30 March 2011 he was granted entry clearance as a Tier 4 (Student) Migrant. In August 2012 he applied for an extension of his leave and it was the refusal of this that gave rise to the present appeal. The reason the

application to the Secretary of State was unsuccessful was that the claimant did not have a valid Confirmation of Acceptance for Studies (CAS). The CAS with the reference number submitted with the application had been withdrawn by the sponsor.

- 3) In evidence before the First-tier Tribunal the claimant stated that he was surprised to learn that his sponsor had withdrawn his CAS. He had at all times complied with the conditions of his visa. The judge considered that it was not at all apparent that the claimant bore any responsibility for the loss of his CAS. The judge considered that on the grounds of “common law fairness” the claimant should have the opportunity to vary his application and should be given a reasonable time within which to find a suitable college for the purpose of making a new application. The judge allowed the appeal on the basis that the decision by the Secretary of State was not in accordance with the law.
- 4) The application for permission to appeal on behalf of the Secretary of State points out that it was not disputed that the CAS had been withdrawn. The withdrawal of the CAS was a matter between the claimant and the institution which issued and then withdrew it. It was not incumbent upon the Secretary of State to afford the claimant further time to obtain a new CAS. The case of Patel [Tier 4 - No “60-day extension”} India [2011] 00187 should be distinguished. The sponsor’s Tier 4 licence had not been withdrawn in the current case.
- 5) It was further contended by the respondent that the judge had disregarded relevant case law, namely Rahman [2014] EWCA Civ 11, in which the Court concluded that fairness did not require the Secretary of State to give the appellant in that case an opportunity to address any deficiency in the CAS. There was no question of the Secretary of State having obtained additional information without reference to the applicant and having relied upon it to refuse the application. The Secretary of State had applied the terms of the Immigration Rules, under which it was the appellant who had the responsibility of ensuring that his application was supported by a valid CAS. If the CAS did not meet the requirements, it could not give him an entitlement to points under Appendix A. If the deficiency in the CAS was the result of a mistake on the part of the sponsor, that was a matter 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.
- 6) On the basis of this decision of the Court of Appeal the Secretary of State submitted that fairness did not require the Secretary of State to give the claimant in the present appeal the opportunity to address the deficiency in the CAS.
- 7) Permission to appeal was granted on the basis of these grounds.

- 8) Mr Armstrong relied on these grounds at the hearing before me. For the claimant, Ms Niama submitted that there was no material error in the determination. The claimant did not bear any responsibility for withdrawal of the CAS and the CAS did not contain wrong information. It was withdrawn by the college through no fault of the sponsor. This was unfair to the claimant, who had paid the fees.
- 9) Ms Niama continued that if the college's licence had been revoked it was the policy of the Secretary of State to allow 60 days for an applicant to obtain a new CAS. The claimant was not given the opportunity to do this, which went to the issue of fairness. Reliance was placed upon the case of Patel, cited above.
- 10) Mr Armstrong responded that the Secretary of State's policy was that where a college was taken off the register through no fault of an applicant then the applicant would be granted 60 days in which to obtain a CAS but this was not the situation here. At the date of the refusal decision, 12 September 2013, the college was still on the register. The CAS was withdrawn by the sponsor, who did not tell the Home Office why the CAS was withdrawn. The case of Patel was not relevant and reliance was placed instead on the decision in Rahman. Under the Immigration Rules the claimant either had a valid CAS or did not.
- 11) Ms Niama further submitted that the Secretary of State's refusal letter was dated 12 September 2013 but the claimant had applied for an extension on 30 August 2012. The Secretary of State had an obligation to enquire why the CAS was withdrawn. The claimant had trusted his college as it was on the register. The Secretary of State should have contacted the claimant at the time of his application and not after such a long delay. Ms Niama said she was unaware whether the claimant had sought an explanation from the college of why the CAS was withdrawn.

Discussion

- 12) It is clear from the decision of Court of Appeal in Rahman that the Judge of the First-tier Tribunal erred in law in finding the decision of the Secretary of State was not in accordance with the law. The claimant did not have a valid CAS, as required under Appendix A of the Immigration Rules, and was therefore not entitled to have points awarded under this provision. As Mr Armstrong pointed out, as the sponsoring college had remained on the register there was no basis to invoke the Secretary of State's policy of allowing an applicant 60 days to obtain a further CAS. The matter was one between the claimant and his college - it was not a case in which the college had been removed from the register. As was pointed out in Rahman, there was no duty upon the respondent at common law to allow the claimant time to obtain a new CAS in the interests of fairness. This point has recently been stated again by the Court of Appeal in Kaur [2015] EWCA Civ 13.

- 13) It is surprising to note that even after the interval of many months, the claimant has not furnished an explanation of why the college withdrew the CAS. According to the claimant's submissions, he had paid his fees to the college. It would have seemed an obvious question for the claimant to have pursued with the college, as envisaged by the Court in Rahman. If the claimant has a remedy, it lies against the college and not against the Secretary of State.
- 14) The decision of the Secretary of State was in accordance with the Immigration Rules and there are no other grounds on which the appeal might succeed. Accordingly the decision is set aside and re-made by dismissing the appeal.

Conclusions

- 15) The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
- 16) I set aside the decision.
- 17) I re-make the decision in the appeal by dismissing it.

Anonymity

- 18) The First-tier Tribunal did not make an order for anonymity and I see no reason why such an order should be made.

Fee Award Note: this is not part of the determination.

As the appeal has been dismissed, no fee award can be made.

Signed

Date **6 November 2014**

Judge of the Upper Tribunal