



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/38483/2014

THE IMMIGRATION ACTS

Heard at City Centre Tower, Birmingham
On 12 August 2015

Decision and Reasons Promulgated
On 1 September 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTSON

Between

MR ADENYI LANRE MEGBABI
ANONYMITY DIRECTION NOT MADE

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Sidhu, Solicitor from Bassi, Solicitors
For the Respondent: Mr Smart, Senior Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant, a citizen of Nigeria, applied for leave to remain as a Tier 4 (General) Migrant pursuant to paragraph 245ZX of HC 395, as amended (the Immigration Rules). His application was refused because (i) he failed to submit a valid Certificate of Acceptance for Studies (because the licence of his Tier 4 Sponsor was revoked by the Respondent after the date of application but before the date of decision); and (ii) because he had not met the requirement that he has to apply for leave to remain for

the purpose of studies which commence within 28 days of the expiry of his current leave to remain. The Respondent's position was that the Appellant's leave expired on 29 July 2014 and his course did not start until 8 September 2014.

2. The Appellant's appeal against that decision was heard by Judge Juss (the Judge) on 11 December 2014 and dismissed, the reasons for which are contained in his decision which was promulgated on 12 January 2015.
3. The grounds of appeal are twofold. Firstly, the Judge erred in finding that the Appellant's course would begin not within 28 days of expiry of his current leave (**QI (Pakistan v SSHD [2011] EWCA Civ 614** applied). Secondly, as the only reason for refusal of the Appellant's application was that his Tier 4 Sponsor's licence had been revoked, **Patel (revocation of sponsor licence - fairness) India [2011] UKUT 00211 (IAC)** provided that in a case where a sponsor licence had been revoked by the Secretary of State during an application for variation of leave to remain and the applicant is both unaware of the revocation and not party to any reason why the licence was revoked, the Secretary of State should afford him a reasonable opportunity to vary the application by identifying a new sponsor before the application is determined. The Judge therefore erred in finding that there was no procedural unfairness to the Appellant as a result of the Respondent's decision.
4. Permission was granted on the basis that both grounds were arguable.
5. Although the Respondent had submitted a Rule 24 response, at the outset of the hearing, Mr Smart quite rightly accepted that the author of the Rule 24 response had erroneously relied on **QI (para 245ZX(I) considered) Pakistan [2010] UKUT (IAC)** and accepted, on the basis of the Court of Appeal decision in **QI**, that the Judge had erred in finding that the Appellant would not be embarking on a new course within 28 days of expiry of his current leave (decision, para 11).
6. In the circumstances, the parties agreed that the appropriate way forward was to allow the appeal to the limited extent that the decision was not in accordance with the law to enable the Respondent to grant the required leave. This accords with the commonly accepted position of the Respondent, as set out in para 9 of the decision of Judge Juss.

Decision

7. The determination of Judge Juss contains a material error of law. His decision is set aside. I remake the decision to allow the appeal to the limited extent that it is not in accordance with the law. The Appellant's application remains with the Respondent to make a lawful decision by granting, as indicated by Mr Smart, the required leave.

Anonymity

The First-tier Tribunal did not make an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum chamber) Rules 2014 and I see no reason, on the facts of this case, why an order should be made pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date

M Robertson
Sitting as Deputy Judge of the Upper Tribunal

TO THE RESPONDENT
FEE AWARD

I have considered whether to make a fee award. I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011). As the Appellant's appeal has been allowed, I make a fee award of £140.00.

Signed

Dated

M Robertson
Deputy Upper Tribunal Judge