



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/48806/2014

THE IMMIGRATION ACTS

Heard at Field House
On 21st September 2015

Determination Promulgated
On 22nd September 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Secretary of State for the Home Department

Appellant

and

Sohail Ahmed

[No anonymity direction made]

Claimant

Representation:

For the claimant: No attendance and no representation
For the respondent: Ms E Savage, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The claimant, Sohail Ahmed, date of birth 1.8.90, is a citizen of Pakistan.
2. This is the appeal of the Secretary of State against the decision of First-tier Tribunal Judge Phull promulgated 26.3.15, allowing the claimant's appeal against the decision of the Secretary of State, dated 20.11.14, to refuse his application for leave to remain in the UK as a Tier 4 Student under the Points Based System (PBS) of the Immigration Rules and to remove him from the UK pursuant to section 47 of the Immigration Asylum and Nationality Act 2006. The Judge heard the appeal on 3.4.15.

3. First-tier Tribunal Judge Shimmin granted permission to appeal on 18.5.15.
4. Thus the matter came before me on 21.9.15 as an appeal in the Upper Tribunal.

Error of Law

5. For the reasons set out herein I find that there was such error of law in the making of the decision of the First-tier Tribunal such that the decision of Judge Phull should be set aside and remade by dismissing the appeal.
6. On 25.7.14 the claimant applied for leave to remain as a Tier 4 Student, but he did not have a Confirmation of Acceptance for Studies (CAS). In consequence, his application was doomed to failure from the outset. He obviously could not meet the requirements of paragraph 245ZX. He did not qualify for points under Appendix A for the CAS and he did not qualify for points under Appendix C for maintenance funds, because he did not support a valid CAS. Contrary to the understanding of the First-tier Tribunal Judge, and in accordance with paragraph 113 of Appendix A of the Immigration Rules, this is a mandatory requirement. In any event, the judge did not seem to appreciate that without a valid CAS, stating the course and location, it is impossible for the Secretary of State to know what the relevant maintenance funds requirements are under Appendix C.
7. Judge Phull erred in stating in §7 that “the immigration rules do not state that points cannot be awarded for maintenance if the appellant does not provide a valid CAS. I find on balance that this part of the respondent’s decision is therefore unlawful and not in accordance with the law.”
8. The judge also erred in stating at §2 that as it was an in-country appeal he could “have regard to any other matter which I consider relevant to the decision, arising after the date of decision.” Section 85A(4) prohibits the Tribunal from considering evidence which was not submitted with and in support of a PBS application. It is not clear whether in fact any post-application evidence was submitted or considered, as the appeal was decided on the papers.
9. However, the decision of the First-tier Tribunal was perverse and entirely contrary to the law for the very obvious reasons set out above. It is plain from the papers before the judge that no CAS had been issued and thus neither Appendix A nor Appendix C could be met. The application had no possibility of success and the appeal should have been dismissed.

Conclusions:

10. For the reasons set out above I find that the making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside and remade.

I set aside the decision.

I re-make the decision in the appeal by dismissing it on all grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an anonymity order. Given the circumstances, I make no anonymity order.

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

In the light of my decision, 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).

I make no fee award.

Reasons: The appeal has been dismissed and thus there can be no fee award.



Signed

Deputy Upper Tribunal Judge Pickup