



Upper Tribunal

(Immigration and Asylum Chamber)

IA/04042/2015

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House, London

Decision & Reasons

Promulgated

On the 1st April 2016

On 19th April 2016

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

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(Anonymity Direction not made)

Claimant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant in the Upper Tribunal

Representation:

For the Claimant: Mr Hart (Solicitor)

For the Secretary of State: Ms Everett (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge N.M.K. Lawrence promulgated on the 1st September 2015, in which he allowed the Claimant's appeal under the Immigration Rules against the Secretary of State's original decision to refuse to permit her further leave to remain as a Tier 4 (General) Student.

2. The Secretary of State has sought to appeal against the decision of First-tier Tribunal Judge Lawrence, and within the Grounds of Appeal it is argued that the First-tier Tribunal Judge failed to give adequate reasons for findings on the material matter. It is argued that the Judge failed to adequately explain how his final determination was arrived at; that it was unclear what a CAS Statement is and how that obviated the need for the Claimant to submit a valid CAS with her application. It is argued that in allowing the appeal under the Immigration Rules the Judge erred in law and that that was a material error, such that the decision should be set aside.
3. Permission to appeal has been granted by First-tier Tribunal Judge Brunnen on the 31st January 2016, in which he found that in his findings First-tier Tribunal Judge Lawrence had stated that the LSC had issued the CAS based upon a language test taken at ETS, but that the Claimant had produced a CAS Statement dated the 12th September 2014, in which it was said that she was exempt from the language test requirement.
4. Judge Brunnen noted that First-tier Tribunal Judge Lawrence had found that the Secretary of State's decision concerning the lack of a CAS was wrong in law. However, Judge Brunnen stated that it was arguable that First-tier Tribunal Judge Lawrence had given inadequate reasons for this finding and that it was arguable that what the Judge noted concerning language testing had no impact on the fact that the Claimant's CAS had been withdrawn by the LSC. Judge Brunnen found that the fact of the withdrawal of the CAS was not apparently challenged by the Claimant and that the Judge made no finding that it had not been withdrawn. He found that the lack of a current CAS as at the date of decision was arguably determinative of the appeal against the Claimant.
5. For the purposes of the Upper Tribunal appeal hearing, Mr Hart had produced a detailed Rule 24 response, together with extracts from Macdonald's Immigration Law and Practice, together with a further bundle of documents.

6. Within the Rule 24 response, there is initially a detailed historical background summary to the case, which I have considered in full, before submissions were made in respect of the question as to whether or not there was a material error of law in the decision of First-tier Tribunal Judge N.M.K. Lawrence. It is argued that the First-tier Tribunal Judge was aware of the fact that the LSC had withdrawn the CAS. It was also submitted that it was perfectly clear what the First-tier Tribunal Judge was referring to in referring to the “CAS Statement, which was dated the 12th September 2014” and which was contained within the bundle and that this was something that the Secretary of State should have been aware about, notwithstanding their non-attendance at the appeal hearing on the 31st July 2015. It is argued that the argument as to whether or not the lack of a CAS as at the date of decision was arguably determinative of the appeal was not an argument raised by the Secretary of State in her Grounds of Appeal, but it is submitted that in any event this is incorrect in law. It is argued that it is part of the legitimate function of the Tribunal to correct administrative mistakes on the part of the Secretary of State and sometimes on the part of sponsors. It was argued that the Judge had before him material demonstrating that the Claimant at the time of the appeal had been reinstated by her sponsor who had acknowledged their mistake in withdrawing the CAS, although it is recognised that this was not expressly acknowledged within the determination. It is argued that there was a valid CAS dated the 16th June 2015. It is argued that there is not a material error of law.
7. In his oral submissions to the Upper Tribunal, Mr Hart acknowledged that in respect of the documents contained within the new bundle, only the documents between pages 31 and 35 were definitely before First-tier Tribunal Judge Lawrence. He sought to argue that the documents between pages 3 and 30 inclusive would have been available upon request by First-tier Tribunal Judge Lawrence at the hearing on the 31st July, but were not formally served, but Mr Hart was unclear as to whether or not any of those documents were actually submitted by him up to the Tribunal Judge on the date of the hearing. He was therefore not in a position to say that any of those documents had actually been referred specifically to the Judge at the appeal hearing. He conceded that if these

documents were not submitted up to the Judge and were not part of the bundle, then the Judge cannot be criticised for having failed to take account of them.

8. He further conceded that the documents at pages 1 and 2 of the new bundle, being a letter from the Claimant's sponsor dated the 4th November 2015 and the actual CAS Statement dated the 16th June 2015 (which he argued was the CAS that showed that the Claimant did actually have a valid CAS as at the date of the appeal hearing) were not actually before the First-tier Tribunal Judge on the date of the hearing on the 31st July 2015, as he had not obtained the valid CAS certificate as at that date.
9. I then sought clarification from Ms Everett as to the position of the Secretary of State, given that it was the Secretary of State's appeal. Ms Everett on behalf of the Secretary of State told me specifically that although the Secretary of State had initially taken the view that the Claimant had taken an English Language Test that had been shown to be "invalid", as far as she had been able to ascertain, that test had never actually been used by the Claimant to apply for any leave or further leave to remain in the United Kingdom. However, it was the Secretary of State's case that as the CAS from the LSC had been withdrawn, that was the basis of the original decision, it could not properly have been found by First-tier Tribunal Judge N.M.K. Lawrence that the Immigration Rules were complied with, as there was no valid CAS on the basis of the evidence before him.
10. Mr Hart on behalf of the Claimant sought to argue that the First-tier Tribunal Judge was entitled to take account of the procedural unfairness on the part of the Secretary of State in making the decision in circumstances where the Claimant had never sought to rely upon an English Language Test which was said to have formed the reason why for her CAS being withdrawn and that she would have been entitled to allow the appeal on Human Rights grounds. He argued that the Judge was entitled to find that the decision was "not in accordance with the law" and that the First-tier Tribunal Judge was entitled to consider any public law arguments in respect of delay, procedural unfairness, and also to consider Human Rights.

11. However, he agreed that First-tier Tribunal Judge Lawrence had not stated within his decision that he had reached his findings on the basis of any public law arguments on Human Rights grounds, and the Judge had not specifically mentioned any procedural unfairness in the way that the decision was made. However, he argued that the Home Office conduct was highly relevant in this case.

My Findings on Error of Law and Materiality

12. In respect of the additional bundle of documents sought to be produced on behalf of the Claimant by Mr Hart, although I accept that the documents contained between pages 31 and 55 of that bundle inclusive, were before the First-tier Tribunal Judge, I do not accept on the evidence presented that any of the other documents were in fact before First-tier Tribunal Judge Lawrence. The fact that it is said that documents between pages 3 and 30 inclusive were available upon request at the First-tier Tribunal hearing on the 31st July 2015, but on the basis of what is said within the consolidated index to that bundle had not been formally served, does not mean that First-tier Tribunal Judge Lawrence had either seen them or should have known about them or their contents. The fact that further documents may be available which were not referred to, and Mr Hart was unable to say had actually been shown to the Judge, does not mean that these were documents the Judge should have taken account of. Certainly, as far as the letter from the Claimant's sponsor dated 4th November 2015 at page 1 of the supplemental bundle or the CAS Statement dated the 16th June 2015 at page 2 of the bundle, where it is said that her CAS had been reinstated, these documents certainly were not before First-tier Tribunal Judge Lawrence.

13. It is clear having read the Grounds of Appeal that the Secretary of State had raised the need for there to be a valid CAS and that the Judge had not explained why they did not need to be a valid CAS. The question as to whether or not the lack of a valid CAS affected the outcome of the appeal before the First-tier Tribunal Judge is therefore a question which was

properly before the Upper Tribunal. The original CAS Confirmation of Acceptance for Studies provided by the LSC that formed the date of the Secretary of State's original decision on the 15th January 2015, had been withdrawn by the LSC. This is agreed by all of the parties. There being no valid CAS before First-tier Tribunal Judge Lawrence, I find that he was not in a position therefore to find that the Claimant should have been awarded points under the Points Based System under Appendix A (Attributes) or Appendix C (Maintenance (Funds)), without there being a valid CAS as required by the Immigration Rules. Although the original CAS Statement dated the 12th September 2014, as found by First-tier Tribunal Judge Lawrence, had stated that the Claimant is "exempt from the English language requirement on the basis of her Batchelor Arts Degree in Marketing from Anglia Ruskin University, UK", that CAS having been withdrawn, the Judge was not entitled to find that the Secretary of State's decision was wrong in law. This does amount to a material error.

14. Although the Claimant has sought to provide now the CAS Statement dated the 16th June 2015, indicating that the sponsor had reinstated her CAS, that document was not before First-tier Tribunal Judge Lawrence, nor was the reasoning contained within that document there to be seen by Judge Lawrence, as although it was argued before him that the CAS had been withdrawn in error, the valid CAS dated the 16th June 2015 was not shown to him, and was not available before him. The original CAS having been withdrawn, and the subsequent reinstatement CAS Statement not being before First-tier Tribunal Judge Lawrence, he was not in a position, on the documentary evidence before him, to find that the decision of the Secretary of State not to award points to the Claimant under Appendix A and C was wrong in law. The decision of First-tier Tribunal Judge Lawrence does thereby contain a material error of law and is set aside.

15. The CAS Statement dated the 16th June 2015, as was indicated by Mr Hart on behalf of the Claimant, would only have been valid for a period of six months, and therefore I would not be in a position to take account of that CAS Statement, if I were to remake the decision, and a further updated CAS Statement would need to be obtained by the Claimant, if this is to be taken into account.

16. Given that the decision of First-tier Tribunal Judge Lawrence did contain a material error of law, his decision is set aside in its entirety, and the matter is remitted back to the First-tier Tribunal for rehearing before any First-tier Tribunal Judge other than First-tier Tribunal Judge N.M.K. Lawrence.

17. In respect of the arguments by Mr Hart that the Judge was entitled to take account of the procedural unfairness aspect of the case, Judge Lawrence made no reference to procedural unfairness on the part of the Secretary of State in making his decision, nor did he allow the appeal or consider the appeal on Human Rights grounds, despite this having been raised within the original Grounds of Appeal. The Claimant has not sought to cross-appeal the decision on that basis. If, to the extent that Judge Lawrence did have in mind any procedural unfairness, it would have to be borne in mind in that regard that it was not the Secretary of State who had withdrawn the CAS, but the LSC. Without a valid CAS, the Secretary of State was not in a position originally to have granted the Claimant's application. Procedural unfairness would therefore not have been a ground for allowing the appeal by First-tier Tribunal Judge Lawrence, but in any event, if he had sought to have done so, given that he has not referred to procedural unfairness in this regard, his reasoning would have been inadequate and insufficient in any event.

Notice of Decision

The decision of First-tier Tribunal Judge N.M.K. Lawrence does contain a material error of law and is set aside.

The matter is remitted back to the First-tier Tribunal for rehearing before any First-tier Tribunal Judge other than First-tier Tribunal Judge N.M.K. Lawrence.

Signed

Rob McGinty

Deputy Judge of the Upper Tribunal McGinty
2016

Dated 3rd April