



IAC-AH-CJ-V1

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

Appeal Numbers: IA/39967/2014  
IA/39972/2014  
IA/39983/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 14<sup>th</sup> March 2016**

**Decision & Reasons  
Promulgated  
On 25<sup>th</sup> April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**JAISON B JOY  
NEELIMA LATHA YOHANNAN  
JOANNA JAISON  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr S Bellaria, Legend Solicitors

For the Respondent: Mr S Whitwell Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of India born on 10<sup>th</sup> March 1985 and on 28<sup>th</sup> March 2014 he made an application for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant with a view to studying at the Sanjari College. He produced a CAS and a loan sanction letter dated

19<sup>th</sup> March 2014 from the Indian Bank. His wife and child are the second and third appellants and are dependents of the first appellant. Their appeals stand or fall with that of the first appellant. The second appellant's appeal was refused under Paragraph 319C(b) and 319C(g) whilst the third appellant's appeal was refused under Paragraph 319H(b) and 319H(g) (both, in effect, because the application of the first appellant was refused).

2. On 23<sup>rd</sup> September 2014 that application was refused under paragraph 322(1A) which states :

*“(1A) Where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant's knowledge), or material facts have not been disclosed, in relation to the application or in order to obtain documents from the Secretary of State or a third party required in support of the application,*

...

*the application must be refused.”*

3. The basis of the refusal was that the appellant had produced a false document. His loan sanction letter was sent for verification and the reasons for refusal letter stated, (and I cite the decision as presented both syntactically and grammatically):

*“I am satisfied that the documents was false because the document was sent for verification and Indian Bank verified the document as false because the savings account was closed and the money withdrawn, therefore no dispersal of loan was done to the savings account.”*

4. The letter proceeded:

*“However the Secretary of State is not satisfied that you have a valid CAS because the Tier 4 Sponsor Register was checked on 18<sup>th</sup> September 2014 but Sanjari International College was not listed as of this date. Therefore you have not met the requirements to be awarded 30 points under Appendix A of the Immigration Rules.”*

The application was also, therefore and as a consequence, rejected under paragraph 245ZX(c) with reference to paragraph 116(e) of Appendix A and paragraph 245ZX(d). It was stated that the Tier 4 Sponsor Register was checked on 18<sup>th</sup> September 2014 and Sanjari College was not listed as the Tier 4 sponsor as at that date. He was therefore awarded no points.

5. The matter then came before First-tier Tribunal Judge Abebrese on 4<sup>th</sup> August 2015 and in a decision issued on 10<sup>th</sup> September 2015 the judge found at paragraph 11 that the verification report asked the bank for

verification of the documents that were submitted in respect of the loan application and:

*“The bank in their response to the email and also in the letter dated 19<sup>th</sup> March 2014 do not comment on the authenticity of the documents which were submitted by the first appellant in support of his application only that the loan was sanctioned, purpose of the loan, terms of the loan. The appellant withdrew the full amount immediately after the granting of the loan. The Tribunal finds that the bank themselves are not questioning the documents that were submitted in support of the application and they do not take the view that the documents provided to them by the appellant was false.”*

However the judge went on to state at paragraph 13 that at the time the application was made the appellant had a valid CAS and he was not informed of the loss of the licence of the College. The Judge found that there ‘was no evidence that the respondent did not follow the appropriate procedures either before or after the loss of the licence’ and proceeded to dismiss the appellant’s appeal.

6. An application for permission to appeal was made on the basis that the judge failed to consider the principles of common law fairness in particular **Patel (Revocation of sponsor licence - fairness) India [2011] UKUT 00211** and **Thakur (PBS decision - common law fairness) Bangladesh [2011] UKUT 00151**. The Secretary of State had not acted fairly in deciding the application and the fact that the Tier 4 sponsor licence was revoked during the pending application should have caused the respondent to allow the appellant more time to find an alternative college.
7. Permission to appeal was granted by Judge Astle who stated that the judge did not engage with the appellant’s argument that the respondent failed to apply her own policy. There was no apparent evidence that the appellant was notified of the problem before the decision was made and given the usual period to find an alternative institution and it was arguable that this amounted to an error of law on the part of the judge.
8. A response under Rule 24 of the Immigration Rules was served stating that in the case of **Raza, R (On the application of) v the Secretary of State for the Home Department [2016] EWCA Civ 36** it was concluded at paragraph 37 that:

*“The fact that there is in general no duty to give notice of what is believed to be a deficiency in the CAS before making an adverse decision does not mean that there may not be some cases where fairness demands that the Secretary of State should not refuse the application without further enquiry.”*
9. It was submitted that it was open to the judge to make the findings at paragraph 13.

- 10.** At the hearing before me Mr Whitwell conceded, on behalf of the Secretary of State, that there was indeed no challenge to the judge's finding in relation to the bank letter and in the circumstances as **Patel** was still good law it appeared that the licence of the college had been revoked without the appellant's knowledge following his application. He concurred with the analysis of Mr Bellaria and the matter should be remitted back to the Secretary of State in line with policy and so that the Secretary of State may give the appellant 60 days within which to find an alternative college.
- 11.** In the light of this concession and in my analysis I agree with that concession following **Patel** was properly made, I set aside the findings at paragraph 13 and remake the decision. The appellant made an application on 28<sup>th</sup> March 2014 and that application was not decided until 23<sup>rd</sup> September 2014. The appellant was continuing to study at the college and he confirmed that he did not know that the college had lost its sponsorship licence until the refusal letter. There was no suggestion that the appellant had been complicit in any way in the withdrawal of his CAS.
- 12.** In the light of this I find that the matter should be remitted back to the Secretary of State for lawful decisions and that the Secretary of State should allow the appellant 60 days within which to find an alternative college in line with **Patel**.

No anonymity direction is made.

### **Order**

The appeal of the first second and third appellants are allowed to the extent outlined above.

Signed

Date 22<sup>nd</sup> April 2016

Deputy Upper Tribunal Judge Rimington

### **TO THE RESPONDENT** **FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award because the appeal was allowed only to the extent outlined above.

Signed

Date 22<sup>nd</sup> April 2016

Deputy Upper Tribunal Judge Rimington