



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/01584/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 12<sup>th</sup> July 2017**

**Decision & Reasons  
Promulgated  
On 15<sup>th</sup> August 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FARRELLY**

**Between**

**MR. MOHAMMAD CHOWDHURY  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: Simon Noble Solicitors  
For the Respondent: Mr P Nath, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. There is a history behind this appeal which is necessary to set out.
2. The appellant was originally granted leave to remain as a student on 20 September 2007 until 2 September 2010. Then, on 14 September 2010 he was granted further leave to remain until 30 December 2013.

**The first appeal**

3. A decision of Judge of First Tier Tribunal O'Malley promulgated on 1 May 2015 refers to an application of the 13 September 2013 for leave to remain as a student which was refused on 29 August 2014. The judge states the refusal was on the basis he did not have a valid CAS, it having been withdrawn.
4. First tier Judge O'Malley found that the College, by the date of decision, had lost its licence. The appellant had not been notified of this and had not had the benefit of the 60-day notice normally given in the interests of fairness. The judge said it was not reasonable for the respondent to then delay deciding his application for eight months and failing to give him time to rectify the situation. The judge allowed the appeal on the basis of fairness because of the respondent's delay and in not following her own policy of giving 60 days notice.

### The second appeal

5. The decision which is the subject matter of the present appeal is dated 2 March 2016. It relates to an application made on 30 December 2013 for further leave to remain.
6. It was heard by First tier Judge Chamberlain who had a copy of the decision of First tier Judge O'Malley. The appeal was heard on the papers so the judge did not have the benefit of submissions.
7. There is no reference in the respondent's decision to the earlier appeal and the 60-day notice. Again, it refers to the CAS having been withdrawn by the sponsor and as a consequence the necessary points not being awarded. Additionally, reference is made to the respondent inviting the appellant for interview on 10 December 2015 to assess whether he genuinely was a student. As he did not attend the conclusion was that he was not genuine.
8. The judge recorded the appellant's claim that he never received the 60 day notice nor the invitations for interview. The judge indicated some scepticism about the latter pointing out the apparent lack of enquiry on his part over a 10-month period.
9. At paragraph 14 of the decision the judge stated:

The grounds of appeal are limited to an appeal on the basis that the decision is a breach of the appellant's human rights. The Appellant cannot appeal against this decision on the basis that it is not in accordance with the law, or on the basis that he meets the requirements of the immigration rules...

10. At paragraphs 18 the judge went on this:

I have considered the refusal of the Appellant's application. I find that the respondent has not provided evidence that she invited the

appellant to an interview. There is no evidence of any correspondence sent either to the appellant or to his representatives. I find that the respondent has failed to provide evidence to show that she invited the appellant for interview. She has provided a copy of the template for an interview which has been filled in with the appellant's name, and date and location of the proposed interview. However, she has provided no evidence to show that she invited the appellant to attend at this date and time. I therefore find that the respondent has failed to show that the decision should have been refused under paragraph 322(10).

11. At paragraph 21 the judge stated:

As I have set out above, in any event, the appeal is limited to an appeal on human rights grounds...

### The Upper Tribunal

12. Permission to appeal was granted on the basis it was arguable from paragraph 14 that the judge believed the appeal was limited to human rights grounds. This was not the case given that the application was made on 30 December 2013. This may have meant no proper decision had been made by the judge under the immigration rules.

13. I am satisfied from the decision the judge was under the misapprehension that there was a limited right of appeal in this case, namely, to human rights grounds. The 2014 Act came into force in July 2014 and transitional provisions applied. Given the date of the application the appellant had a full right of appeal. Consequently, the judge incorrectly did not consider the merits of his application under the immigration rules. This was a material error of law. Because the appeal was not considered under the rules the decision cannot stand.

### Disposal

14. The appellant's representative submitted that I should remake the decision and allow the appeal. He submitted the appeal could be allowed on a freestanding article 8 basis in the absence of a valid CAS.

15. I do not find I am in a position to remake the decision. This is because having sought to unravel the chronology it is not apparent what action the respondent took on foot of the earlier decision of First Tier Tribunal O'Malley. The index decision makes no reference to it and again raises the absence of the CAS without reference to the 60-day notice issue. First tier Judge Chamberlain did indicate a view on the question of notification and non-attendance at interview but do not make a decision on this point because of the misunderstanding about the rights of appeal. In this circumstance it is my conclusion that the proper course is for the matter to be remitted to the First Tier Tribunal

to remake afresh. This is in the hope that the respondent can clarify the basis for the refusal in light of the above.

### **Decision**

The decision of First Tier Tribunal Judge Chamberlain dismissing the appellant's appeal materially errs if law and cannot stand. The appeal is remitted for a hearing de novo to the First Tier Tribunal.

Deputy Upper Tribunal Judge Farrelly.

8th August 2017