



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

Appeal Number: IA/31127/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 13 November 2017**

**Decision & Reasons  
Promulgated**

**On 28 December 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**MR TARA BIKRAM THAPA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr I Khan, Counsel

For the Respondent: Mr D Clarke, HOPO

**DECISION AND REASONS**

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Greasley to dismiss his appeal against the decision of the respondent to refuse him further leave to remain in the UK as a Tier 2 (General) Migrant pursuant to paragraph 245 of the Immigration Rules.

2. The appellant also appealed against a decision in relation to paragraph 322(2) of the Rules in relation to a Certificate of Sponsorship allegedly produced through deception.
3. The appellant was granted leave to enter the UK on 30 October 2009 as a Tier 4 student and at various stages his leave was extended to remain from 9 October 2013 to 9 July 2014. On 9 July 2014, the appellant made an in-time application for further leave to remain in the UK as a Tier 2 (General) Migrant.
4. Between December 2009 and August 2013, the appellant worked part-time at "Al Boccon D'vino" in management. Before his leave to remain expired he was also looking for a further job in a similar field. A friend told him about a job vacancy at Al Faisal restaurant. Following an interview, he was selected for the job. However, before he could start work, he first had to sort out his visa as he did not have leave to work. His employer, Al Faisal, issued him with a sponsorship letter known as COS (Certificate of Sponsorship). He made the application for leave to be employed by Al Faisal on 9 July 2014 on the day his leave to remain was expiring, by attending the visa service so that he could receive a decision promptly. He had been kept waiting since 9 July 2014 and in the meantime his sponsor's licence was revoked.
5. On 2 September 2015, the Secretary of State refused the application because she was not satisfied that the appellant had provided a valid Certificate of Sponsorship reference number and had not therefore been awarded any points of sponsorship. UKVI conducted checks which confirmed that the sponsor, Al Faisal, had not issued the appellant with a Certificate of Sponsorship and they did not hold a sponsor licence. Accordingly, the appellant did not meet the requirements of paragraph 245HD of the Immigration Rules. The respondent was not satisfied the appellant did not gain the certificate through deception.
6. The appellant informed the judge that he expected 60 calendar days to be given an opportunity to locate an alternative sponsor, but simply received a refusal letter stating his application had been refused because he had an invalid COS. He told the judge that the COS was genuine. He believed that the respondent had acted unlawfully. At the hearing before the judge the HOPO, Mr Lumb, indicated in submissions that he could not specifically point within the respondent's file to identified evidence in relation to deceptive or fraudulent documentation, and he proposed, instead, to ask that the appeal be dismissed in relation to paragraph 245 requirements in relation to the absence of a lawful Certificate of Sponsorship.
7. The judge accepted that the appellant had failed to demonstrate that he had been in possession of a lawful Certificate of Sponsorship. He accepted Mr Lumb's submission that there was no formal requirement for the appellant to be afforded an additional 60 days in which to identify an

alternative sponsor, in relation. The judge held that this provision only applied in relation to Tier 4 applications, and not those relating to a Tier 2 visa.

8. The judge went on to say at paragraph 22 that in his oral evidence Mr Thapa accepted that the sponsor licence in relation to the Birmingham restaurant did not seek to continue in existence after the appellant had formally applied for it. The judge made no further or separate findings in relation to paragraph 322(2) of the Rules.
9. The appellant appealed the judge's decision on two grounds: (1) that the judge failed to apply the respondent's 60 days policy; and (2) failed to make a finding on the paragraph 322 allegation given that the SSHD had not provided evidence of any deception.
10. From the outset, Mr Clarke submitted that in view of Mr Lumb's concession on the paragraph 322 point, the judge erred in law in failing to make a finding on this issue in favour of the appellant. That disposed of the appellant's second ground.
11. I also find that the judge erred in finding that the respondent's 60 days policy only applied to a Tier 4 application and not to a Tier 2 application.
12. The appellant's first ground argued that it was unfair of the respondent not to grant him 60 days to find a new sponsor in line with her policy.
13. I shall at this stage quote the policy. It says:-

***"Employees: if your visa sponsor loses their licence***

You'll have to leave your job and leave the UK if your employer loses their sponsor licence – unless you make a new visa application to stay in the UK.

You could also be affected if:

- their licence is suspended
- they're taken over
- they don't renew their licence

What happens to you depends on whether you're already in the k when your employer's sponsor licence changes.

**If you're already in the UK**

When your sponsor loses their licence your:

- certificate of sponsorship is cancelled

- visa is limited to 60 days (or however long you have left on the visa if it's less than 60 days)

You'll have to leave your job and leave the UK unless you make a new visa application within that time – check your eligibility for visas.

If you're involved in the reasons why your sponsor lost their licence, your visa will be withdrawn and you'll have to leave the UK immediately."

14. Mr Khan for the appellant submitted that the Secretary of State does not say that the COS was invalid. However, if the Secretary of State is saying that the COS was obtained fraudulently, which brings paragraph 322 into play, we need to know the reason why the Secretary of State believed it was obtained fraudulently. If the Secretary of State revoked the COS for this reason, then the Secretary of State needed to give the appellant 60 days to find a new sponsor.
15. Mr Khan argued also that if the Secretary of State has conceded that there is not a 322 point in that there is no deception, the respondent has not provided any evidence that the COS was invalid. If the Secretary of State was conceding the paragraph 322 point, then the issue of invalidity does not come into it.
16. Mr Clarke relied on the Secretary of State's policy guidance. He said the reality is that the appellant applied on the day his visa ran out, so he could not get the 60 days. He said Mr Khan did not identify anything in the policy that would require the respondent to grant the appellant 60 days in order to find an alternative sponsor. He said when the sponsor lost its licence, it was not in place and therefore the appellant could not be afforded the 60 days.
17. Mr Khan relied on the decision in **Thakur (PBS decision - common law fairness) Bangladesh [2011] UKUT 00151 (IAC)** to argue that the respondent's decision was not in accordance with the law. The respondent's failure to comply with a common law duty to act fairly in the decision-making process when an appellant had not had an adequate opportunity of finding another sponsor following the withdrawal of his sponsor's licence or making further representations before the decision was made, meant that the respondent's decision was unfair. The decision was not in accordance with the spirit of the policy.
18. I find for the reasons given earlier, that the judge erred in law in not making a decision under paragraph 322(2) in favour of the appellant. Given that the respondent was conceding the paragraph 322 point, it means that the issue of invalidity does not come into it.
19. In any event, my understanding of the Tier 2 policy is that if an appellant already had leave to remain as an employee of his sponsor and the

Certificate of Sponsorship was cancelled, then the appellant's leave was limited to 60 days or whatever was left on his visa if it was less than 60 days. This appellant has never had leave to remain as an employee of a sponsor. Until the Secretary of State accepted his application and granted him leave to remain as an employee with Al Faisal, I find that the appellant could not bring himself within the Secretary of State's policy in respect of his Tier 2 application. Furthermore, the appellant had no leave left as his visa ran out on the day he made the application. Therefore, I fail to see on what basis his visa could be limited to 60 days as a Tier 2 (General) Migrant, when he did not have such leave prior to making his application on 9 July 2014.

20. On the evidence, I reject Mr. Khan's argument that the respondent's decision was not in accordance with the law.
21. I find that the judge did make errors of law. Those errors are however not material as the judge's decision that the appellant's appeal could not succeed shall stand.

### **Notice of Decision**

22. I find that the Secretary of State's decision was in accordance with the law. The appellant's appeal is dismissed.
23. No anonymity direction is made.

Signed

Date: 22 December 2017

Deputy Upper Tribunal Judge Eshun