Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/31995/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25th October 2017	**On 9 November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

GURIQBAL SINGH DHILLON
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr F Khan, Counsel
For the Respondent: Mr Nath, Senior Presenting Officer

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of a First-tier Tribunal (Judge Majid). In a decision promulgated on 10th February 2017, the FtT allowed the Respondent's appeal against the

Secretary of State's refusal to vary his leave to remain and to remove him under Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. For the purposes of this decision, for ease of reference, I shall refer to the Secretary of State as "the Respondent" and to Guriqbal Singh Dhillon as "the Appellant" reflecting their respective positions before the First-tier Tribunal.

3. The Appellant is a citizen of India (born 13th January 1988). In October 2009 he entered the United Kingdom with entry clearance valid until 30th August 2013.

4. In August 2013 he applied for leave to remain and with the application he submitted a CAS (Confirmation of Acceptance for Studies) for an establishment whose licence had been revoked by the Respondent.

5. In accordance with the usual procedure, the Respondent suspended consideration of the Appellant's application for 60 days, the primary reason being for the Appellant to find a new course run by a properly licensed supplier. The Appellant was informed of this decision by post dated 10th July 2015.

6. Since nothing was forthcoming from the Appellant, his application was considered by the Respondent and subsequently refused by a notice dated 9th September 2015.

7. The Appellant appealed the refusal, his appeal notice being dated 28th September 2015. The Grounds of Appeal were generalised in form, but essentially claimed that the Respondent's decision contravened the Appellant's human rights. At a later stage the Appellant advanced a claim that he had not been given the opportunity to respond to the 60-day period of grace for resubmission of a valid CAS.

8. The appeal came before Judge Majid. The core issue in the appeal centred on whether or not the Appellant had been given 60 days to provide a valid CAS. The requirement to provide a valid CAS is a mandatory one with which the Appellant had to comply. It is not a matter than can be waived at the discretion of the First-tier Tribunal.

9. In his decision Judge Majid, having noted that the Appellant gave oral evidence consistent with the assertions contained in his original application form [6], followed this up by saying at [7] the following:

> "I have outlined the evidential elements of the evidence adduced on behalf of the Appellant which are relevant to the fair disposal of this appeal. I have taken into account all of the documentary and oral evidence in making up my mind on factual issues. To avoid repetition, I shall refer to some evidence in my deliberations below."

10. There then follows several paragraphs of assertion and comment until paragraph [15] where the judge says the following:

> "Having regard to his particular circumstances this student deserves human care and the benefit of discretion properly available to advance the interest of genuine students."

Under the heading of "**The Relevant Law**" the judge says this at [21]:

> "I found the Appellant a bona fide student. The superior precedents are correct in stating that his discontinuance of education will be devastating for him. He has spent a lot of money and that should not be allowed to go to waste. He should be helped and I am happy to allow the appeal."

11. There then follows numerous lengthy paragraphs [23] to [28] commenting on debates concerning the position of international students, none of which appear to bear any relevance to the factual issue which was before the judge.

12. Further comment on the interpretation of statute law follows and finally in [35] there is what can be described as a sweep up paragraph where the judge says the following:

> "In the circumstances in view of my deliberations in the preceding paragraphs and having taken into account all of the oral and documentary evidence as well as the submissions at my disposal, cognisant of the fact that the burden of proof is on the Appellant and the standard of proof is the balance of probabilities, I am persuaded that the Appellant comes within the relevant Immigration Rules as amended and should have the benefit of discretion."

He then allowed the appeal.

Onward Appeal

13. The Respondent appealed the decision on the basis that there was a failure to make any findings of fact, let alone sufficiently clear reasons for the decision. Permission having been granted the matter therefore came before me as an error of law hearing in the Upper Tribunal.

Error of Law Hearing

14. Before me Mr Nath appeared for the Respondent and Mr Khan for the Appellant. Mr Nath simply relied on the grounds and grant of permission saying that he need not expand any further on what was set out there.

15. Mr Khan for the Appellant, sought to persuade me that the decision should stand. He said the judge had found the Appellant to be a credible and genuine student who had paid a full fee to an institution. It was not the appellant's fault that the institution had had its licence revoked.

16. At the end of submissions I announced that I was satisfied that the decision of Judge Majid must be set aside for legal error and I now give my reasons for this finding. Whilst I accept that Mr Khan could do no more than he did to try to persuade me otherwise, I find that Judge Majid failed completely to recognise the issue before him. Put at its simplest, he was

tasked in this appeal to make a factual finding on whether or not the Appellant had taken steps to find a new educational Sponsor within the 60-day period given by the Respondent, starting on 10th July 2015. If the Appellant had not taken appropriate steps then it was for him to say why not and for the judge to then assess the credibility or otherwise of that explanation. That was the starting point in this appeal.

17. It is clear that Judge Majid did not grasp the evidential task before him. I find on a reading of the decision that nowhere has the judge made a properly reasoned finding on this issue. Indeed it is hard to see altogether what factual matrix the judge was relying on when allowing the appeal. This places the Respondent in the position of not knowing why she was the losing party. It is trite law that a losing party in an appeal is entitled to know why they lost, set out in a properly considered decision.

18. I find therefore that there is no alternative other than to set aside the FtT's decision for legal error. It will be set aside in its entirety. Having announced my decision to the parties at the hearing, both representatives were of the view that there is a need for a new fact-finding exercise. Both considered that the appropriate course is for this appeal to be returned to the First-tier Tribunal for that Tribunal to remake the decision afresh. There is nothing that can be preserved from the original decision.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 10th February 2017 is hereby set aside for legal error. The appeal shall be considered afresh by the First-tier Tribunal (not Judge Majid) and that Tribunal shall remake the decision.

No anonymity direction is made.

Signed C E Roberts Date 08 November 2017

Deputy Upper Tribunal Judge Roberts