



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/00058/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14 August 2018  
Decision given orally

Decision & Reasons Promulgated  
On 24 August 2018

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

MD JABAD HOSSAIN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr H Mahood, solicitor Chancery solicitors

For the Respondent: Ms A Fijiwala, senior presenting officer

**DECISION AND REASONS**

1. The appellant who is a national of Bangladesh born 22 January 1984 appeals with permission the decision of First-tier Tribunal Judge A M Black who dismissed his appeal against the decision of the Secretary of State dated 19 December 2017 refusing to vary his leave to remain and to remove the appellant.
2. Neither party requires me to give detailed reasons for my decision in the light of the agreement that has been reached for the disposal of this appeal. It is sufficient to record that on 13 September 2013 the appellant made a combined application for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant under the points-based system. This was refused on the basis that false representations had been made in relation to that application and so attracting refusal under paragraph 322(1A) of the Immigration Rules. In addition, the Secretary of State refused to award points under

Appendix A on the basis that he had not produced a valid CAS as his chosen college was not listed as of the date of decision.

3. The appellant appealed against that decision to the First-tier Tribunal. In a decision dated 16 October 2014 First-tier Tribunal Judge Oakley found that the Secretary of State had not made out his case based on the misrepresentation and allowed the appeal on the basis. As then acknowledged by the Secretary of State's representative at the hearing, the appellant should have been given 60 days within which to find a new sponsor. Thus, the appeal was also allowed as not in accordance with the Immigration Rules. Time passed. It appears that the appellant's representatives jogged the Secretary of State's memory in August 2017 with a reminder. This led to a decision on the pending application dated 19 December 2017 where, again, the Secretary of State relied on a refusal under paragraph 322(1A) based on false representations having been made, and furthermore because the appellant had not produced a valid CAS as his selected college, Northam, was not on the register.
4. In accordance with the transitional provisions in the Immigration Act 2014 (Commencement No. 4, Transitional and Saving Provisions and Amendment) Order 2015 the matter came before First-tier Tribunal Judge Black on 21 May 2018 when the Secretary of State was not represented. He had however provided in advance of the hearing a supplementary bundle which included the evidence relied on in connection with the refusal on the grounds of misrepresentation. The judge concluded that the Secretary of State was wrong to refuse the application under Rule 322 based on insufficient evidence. There has been no cross-appeal by the Secretary of State.
5. As to the second issue which related to the CAS and the 60 day period, with commendable candour, Miss Fijiwala conceded that the judge was wrong to find that the 60 day extension had been granted. It had not. She accepts that the transitional provisions I have referred to above applied so the proper course for the judge would have been to allow the appeal as not in accordance with the law.

#### NOTICE OF DECISION

6. The parties have agreed that the decision therefore of the First-tier Tribunal be set aside and that the decision be remade allowing the appeal on the basis that the decision of the Secretary of State dated 17 December 2017 was not in accordance with the law. As a consequence, despite the extraordinary passage of time the appellant's application for leave to remain as a Tier 4 (General) Student Migrant dated 13 September 2013 remains pending before the Secretary of State.

Signed  
*UTJ Dawson*  
Upper Tribunal Judge Dawson

Date 16 August 2018