



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number IA/26015/2015

THE IMMIGRATION ACTS

Heard at Field House
On 1 June 2018

Decision & Reasons Promulgated
On 18 July 2018

Before

Deputy Judge of the Upper Tribunal Bagral

Between

Adnan Khurshid
(Anonymity order not made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation

For the Appellant: Miss A Jones, of Counsel instructed by Connaughts Solicitors.

For the Respondent: Ms Z Kiss, Home Office Presenting Officer.

REMITTAL AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Swaniker (“the judge”) promulgated on 31 May 2017 dismissing the appellant’s appeal against the decision of the respondent dated 6 July 2015 to refuse to vary leave to remain and to remove him from the UK pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006.

Background

2. The appellant is a national of Pakistan born on 21 September 1984. He entered the UK on 3 February 2011 with leave valid until 13 March 2012 granted pursuant to entry clearance as a Tier 4 (General) Student Migrant. On 13 March 2012 the appellant applied for further leave to remain in the same category. The application was refused for reasons set out in a combined 'reasons for refusal' letter and Notice of Immigration Decision dated 15 January 2014, essentially on the basis that he had failed to submit a valid Confirmation of Acceptance for Studies ('CAS'). The section 47 removal decision was communicated in the same document.
3. The judge dismissed the appellant's appeal for reasons set out in her decision.
4. The appellant sought permission to appeal which was granted by Upper Tribunal Judge Grubb on 1 February 2018. The grant of permission to appeal was on the basis that the judge's failure to properly consider the evidence concerning the misdirection by the respondent of the appellant's documents on 8 occasions to his previous address thus depriving the appellant of an opportunity to obtain a new CAS was an arguable error of law.
5. The respondent has not filed a Rule 24 response.

Consideration

6. At the hearing both representatives made submissions which I have considered. I find the judge did err in law.
7. This is a case that would have benefited from a chronology of the case addressing the full history. Neither the judge nor this tribunal have been assisted by one, albeit, there is a useful short chronology of the occasions the respondent returned documents to the appellant in the grounds of appeal, the accuracy of which is not challenged before me.
8. Some of the key aspects of the chronology are referenced in the decision of the judge and are also discernible from the respondent's bundle before the First-tier Tribunal and the grounds of appeal.
9. The circumstances appear to be as follows.
10. The appellant applied for further leave to remain on 13 March 2012. The application was made on the basis of pursuing a course at Lincolns College London (LCL). The appellant submitted a CAS, his passport and educational certificates in support of the application. The appellant further informed the respondent of his change of address to Burlington Road from Carlton Terrace. While his application was pending LCL lost its licence. On 15 August 2012 the

appellant was given an opportunity to obtain a new sponsor and submit a CAS within 60 days.

11. On 13 October 2012 the appellant submitted another application. This was to pursue a Post Graduate Diploma in Business Management and Marketing at St John College Ltd (the sponsor).
12. On 6 November 2012 the respondent refused the application made on 13 March 2012 as the appellant had failed to provide a CAS during the allotted 60-day period.
13. On 20 February 2013 the respondent claims the appellant's documents were sent to Carlton Terrace and were not returned to the Home Office.
14. The appellant commenced Judicial Review proceedings on the basis that the respondent's refusal was unlawful as a new application and supporting CAS was submitted on 13 October 2012. The respondent claimed that this application was never made, however, this point was conceded, and the proceedings were disposed of by a Consent Order dated 15 October 2014. I pause here to note that there is no evidential support for the submission of Ms Kiss that the Consent Order confirms the appellant was aware of the respondent's contention that the documents had been returned to him. The respondent agreed to reconsider the appellant's application.
15. By the time the respondent checked the sponsor register on 15 April 2015, the sponsor's licence had been revoked. The appellant was informed that the CAS assigned to him was no longer valid and he was given an opportunity to find an alternative sponsor and provide a CAS within 60 days ending on 14 June 2015.
16. On 11 May 2015 the appellant's representatives requested the respondent to return the appellant's documents. The appellant claimed that the request went unacknowledged. As the appellant did not provide a new CAS the application was accordingly refused on 6 July 2015.
17. Before the judge the appellant argued that the respondent ought to have exercised his discretion differently because it was impossible for him to meet the Rules as he never received his documents (original educational certificates and passport) from the respondent, thereby depriving him of an opportunity to obtain a new CAS within the 60-day period. It was contended that the respondent unfairly deprived the appellant of that opportunity as he improperly/negligently continued to send the appellant's documents to an address from which previous attempts to return the documents had already failed and been returned to the Home Office.
18. The respondent contended that the documents were returned to the appellant on 20 February 2013 and not returned, and that, the appellant only notified the Home Office of a change of address in 2014.

19. Copies of the Home Office CID immigration records (CID records) for the appellant were produced by the respondent at the hearing before the judge. A helpful summary of what the CID records show is set out in the grounds of appeal. Save for one anomaly, the CID records show that from 30 October 2012 to 20 February 2013 the respondent sent 8 letters to the appellant at his previous address; Carlton Terrace. The anomaly relates to a letter sent to the Appellant on 5 November to Burlington Road or 6 November to Carlton Terrace and returned on 5 December 2012. Save for the letter sent on 20 February 2013 to the appellant at Carlton Terrace, all letters were returned to the Home Office.

20. Essentially, the judge was not satisfied that the appellant had been truthful in his evidence regarding the return of his documents. The judge concluded that the appellant's failure to look to other sources for the documents, which would have enabled him to apply to another college was not consistent with that of a genuine student and took into consideration the delay by the appellant's representatives from the date of the 60-day letter in April 2015 to the request to return the documents in May 2015. The judge further noted the admission made by the appellant's representatives in the Statement of Grounds that the documents were returned to him.

21. Specifically, at [17] the judge stated thus:

“... I note that the Consent Order was made as far back as October 2014. Yet, the appellant did not seek to obtain the necessary documents to support a new application from other sources, even after the respondent had allegedly failed to respond to his representatives' request of 11 May 2015 for the return of his documents. Even following the respondent's decision on 6 July 2015, I note that the appellant still failed to obtain further copies of these documents from other sources, including his old university in Pakistan. I find his conduct in failing to directly look to other sources for the documents which would enable him to apply to another college and obtain a valid CAS is not consistent with that of a genuine student and undermines his argument as to unfairness on the part of the respondent ...”

22. There are difficulties with the judge's consideration of the evidence. It is clear in this case that the judge did not accept that the appellant was a genuine student and rejected his contention that the respondent had acted unfairly. While the judge rightly identified some difficulties with the appellant's case, I am persuaded the judge has not shown that her consideration of the evidence was balanced. I find the judge's consideration of the evidence was one-sided and failed to consider material factors on the appellant's side.

23. The use of the adverb “allegedly” at [17] makes it is plain that the judge was not satisfied that the respondent had failed to respond to the appellant's representatives letter of 11 May 2015 requesting the return of his documents. Before the judge however was a witness statement from the appellant's representatives dated 13 June 2017 attesting to, (i) that they had not received a response to their letter of 11 May 2015 from the Home Office and, (ii) during the Judicial Review proceedings the Home Office never stated that the documents had been returned. The evidence was material to, but not determinative of, the appellant's case. I am not satisfied that this evidence has been considered. It does not feature in the judge's consideration of the evidence

and nor does the body of the judge's conclusions demonstrate that she considered it or that she gave it adequate consideration.

24. Further, there is an omission to consider the appellant's evidence that he would not have been able to obtain the documents within the 60-day period as the process was lengthy and costly. The cost of obtaining new certificates was evidenced in the documents from the Punjab University. While the judge refers at [17] to the facility available to obtain copy certificates, she does not factor into her assessment the appellant's evidence on this point or provide reasons why his explanation was to be rejected.
25. The judge's consideration of the CID records is also inadequate. The judge does not make any direct findings on this evidence. The evidence was capable of supporting the appellant's case that the respondent was aware of his change of address in 2012 but continued regardless to send documents to his previous address on 8 occasions. I do not accept the submission of Ms Kiss that the respondent was only notified of a change of address in 2014. That submission is not supported by the CID records before the judge. There is also reference in the decision to letters being sent on 5 occasions; this is incorrect and further reinforces my view that the evidence in the case has not been adequately considered.
26. For all these reasons, I am not satisfied that there has been an adequate consideration of the evidence in support of the appellant's contention that there was unfairness in the way his application was handled by the respondent.
27. Accordingly, in all the circumstances, I find that the judge materially erred in law. The decision of the First-tier Tribunal is set aside. As no findings are preserved, a rehearing is required. The appropriate forum in which to do so is the First-tier Tribunal. The parties should be prepared to assist the judge by providing a detailed chronology setting out key dates and events in relation to the facts in issue.

Notice of Decision

28. The decision of the First-tier Tribunal contained a material error of law and is set aside.
29. The appeal is remitted for a rehearing before a judge other than Judge Swaniker.

No anonymity order is sought or made.

Deputy Judge of the Upper Tribunal Bagral

1 July 2018