



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

Appeal Number: IA/02174/2014

THE IMMIGRATION ACTS

Heard at Bradford

On 30 June 2014

Determination

Promulgated

On 29th July 2014

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

TAHIR MAHMOOD BASHIR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Qureshi, Fawad Law Associates

For the Respondent: Mr M Diwncyz, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Tahir Mahmood Bashir, was born on 25 April 1983 and is a male citizen of Pakistan. In a decision dated 30 December 2013, the appellant was refused further leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant. The appellant appealed against that decision to the First-tier Tribunal (Judge Watters) which, in a determination promulgated on 13 March 2014, dismissed his appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. It is not in dispute that, when the appellant submitted his application for further leave to remain on 26 November 2013, his sponsor (St Alban's College Limited) was a Highly Trusted Sponsor but, by the time the application was considered and a decision made by the respondent, it had become a "legacy" sponsor whose CAS would only be valid if assigned to a student who was resitting or repeating a module in order to complete a course of study that they had already commenced with that sponsor. The appellant was a new (and not a returning) student seeking to study at the college and, for that reason, he received zero points for "Attributes - Confirmation of Acceptance for Studies" (CAS).
3. Mr Diwncyz, for the respondent, acknowledged that there was no apparent difference between the appellant's circumstances and those of an applicant whose sponsor had been removed from the register but who had been given the opportunity, within a 60 day period, to obtain a new CAS for submission with his original application. There is no dispute that the appellant was wholly unaware of the decision of the respondent on 5 December 2013 (that is, after he had submitted his application for further leave to remain) to change the status of the appellant's sponsor nor is there any suggestion whatever that the appellant was involved in the downgrading of the sponsor's status. I find that this is one of those relatively unusual cases where common law principles of fairness are engaged with the consequence that the respondent's decision is to found to be not in accordance with the law; Mr Diwncyz did not seek to persuade me otherwise. The proper course of action is for the appeal to be allowed and the decision remade such that the appellant's application for further leave to remain remains outstanding. It is to be expected that the respondent will provide the appellant with a 60 day period in which to locate a new sponsor and obtain a valid CAS for submission in support of his original application.
4. Finally, the judge's determination in respect of the respondent's decision to remove the appellant under Section 47 of the Immigration, Asylum and Nationality Act 2006 is also incorrect. The decision in this appeal was taken after 8 May 2013, the date on which Section 51 of the Crime and Courts Act 2013 became effective. There was, therefore, nothing wrong with the conclusion of a decision to remove the appellant in the same notice and the decision to refuse him further leave to remain.

DECISION

5. The determination of the First-tier Tribunal which was promulgated on 13 March 2014 is set aside. I have remade the decision. The appeal is allowed and, accordingly, the appellant's application for further leave to remain remains outstanding before the Secretary of State.

Signed

Date 25 July 2014

Upper Tribunal Judge Clive Lane