



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

Appeal Number: IA/18707/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 8 August 2014  
Prepared on 8 August 2014**

**Determination  
Promulgated  
On 26 August 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**SHIJIR-ERDENE DULAMRAGCHAA**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr P R Collins, Counsel, instructed by Breytenbachs  
Immigration

For the Respondent: Mr N Bramble, Senior Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant, a national of Mongolia, date of birth 16 February 1973, appealed against the Respondent's decision, dated 14 June 2012, to dismiss an application made on 19 February 2012 for leave to remain as a

Tier 4 (General) Student Migrant. The Respondent asserted there was no right of appeal because the application was made when the Appellant did not have leave to remain.

2. The Appellant had leave to remain until 28 December 2011 and applied in time in an earlier application, date unknown in December 2011, for leave to remain as a Tier 4 (General) Student Migrant. That application had been rejected as invalid because it had not contained the required mandatory particulars in the relevant application form and accordingly was not valid. The mandatory requirements were for the Appellant to have a CAS number allocated. The Appellant completed the application form but could not provide a CAS number because quite simply he had not done the exams and no college would issue a CAS in the expectation of the Appellant succeeding.
3. The Appellant therefore made a further application for leave to remain (Tier 4 (General ) student migrant) (the second application) on 9 February 2012.
4. Before First-tier Tribunal Judge Devittie (the judge) it was argued that in fact the application of 9 February 2012 was simply a variation of the earlier in time application. The judge found that the Respondent's decision on the previous application was not in accordance with the law and therefore the Appellant's Section 3C leave under the Immigration Act 1971 continued. The judge accepted there was a valid appeal against the second decision. The judge found the appeal succeeded under Appendix C (maintenance/funds).
5. Permission to appeal the judge's decision was given by First-tier Tribunal Judge R A Cox on 13 June 2014.
6. It is clear from the case law, particularly the decisions in *Alam and Others* [2012] EWCA Civ 960 particularly [50, 51] and *Rodriguez* [2014] EWCA Civ

2 [86] that issues of invalidity as opposed to aspects of an application that fell for substantive consideration should be distinguished one from another and the mandatory sections in application form have to be completed for there to be a valid application. In those circumstances it is plain and accepted that the Appellant did not provide the CAS number required with the earlier application.

7. It was argued by Mr Collins that so long as something or some words were put in the mandatory section of the application, indeed as illustrated by the particular case, that was sufficient to show the mandatory section had been completed even if what was inserted amounted to nonsense or really did not address the existence of such a CAS Sponsor or the acceptance on a course or even the issue of a CAS number or letter subject to meeting requirements.
8. I reject Mr Collins' argument because I find that the 'mandatory' section means exactly what it says and unfortunately for this Appellant he did not at the date he applied in time in 2011 have the necessary CAS particulars to complete the mandatory section. It followed the earlier application was invalid. As a fact, the second application was not made in time and there was no right of appeal against the refusal to the Tribunal. The First-tier Tribunal Judge's decision was a clear error of law in that he had no jurisdiction to hear an appeal.
7. The original Tribunal's decision cannot stand.
8. There was no right of appeal to the Tribunal.

**Anonymity Order**

No anonymity order is appropriate.

**Fee Award**

There is no right of appeal and so there can be no fee award.

Signed

Date 19 August 2014

Deputy Upper Tribunal Judge Davey