



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

Appeal Number: IA/34479/2013

THE IMMIGRATION ACTS

**Heard at Upper Tribunal Hearing in Field
House
On 21 May 2014**

**Determination
Promulgated
On 10 June 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR WALTER RICHAARD MSECHU
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Kandola (Home Office Presenting Officer)

For the Respondent: No representative

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department. I shall refer to the parties for the sake of convenience as the claimant who is Mr Walter Richaard Msechu and to the appellant as the Secretary of State for the Home Department.

2. The claimant whose date of birth is 11 May 1985 is a citizen of Tanzania. The Secretary of State appeals the decision made by First-tier Tribunal Judge Trevaskis in which he allowed the appeal on immigration grounds.

Background

3. On 22 May 2013 the claimant made a combined application for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant under the points-based system (PBS) and for a biometric residence permit (BRP).
4. On 6 August 2013 the Secretary of State for the Home Department refused the application under paragraph 245ZX(c) with reference to paragraph 115A of Appendix A and paragraph 245ZX(d) of the Immigration Rules. With regard to attributes the appellant failed to meet the requirements of the Rules because he did not provide a valid CAS. As a result of the failure to meet the attributes requirements the respondent was unable to consider the issue of maintenance (funds).

Immigration History

5. The claimant first entered the UK on 31 August 2007 with conferred leave to enter as a student from 7 August 2007 until 30 November 2009. On 28 January 2010 the appellant was granted leave to remain as a Tier 4 (General) Student until 16 April 2012. On 30 June 2012 the appellant was granted leave to remain as a Tier 4 (General) Student until 31 October 2012. His leave was continued on the same basis from 11 February 2013 until 22 May 2013. In support of his application he provided a copy of his previous CAS.
6. In a determination following a hearing on 4 February 2014 before First-tier Tribunal Judge Trevaskis the Tribunal allowed the appeal under the Immigration Rules having reached the conclusion that the decision made by the Secretary of State was not in accordance with the law. The appeal was to be remitted to the respondent to apply the evidential flexibility policy. The Tribunal heard evidence from the claimant who was not represented who confirmed that he did not have a valid CAS and would not be able to obtain one unless and until he enrolled for a new course. His dissertation was due to be completed by 5 June 2014. The Tribunal followed the Upper Tribunal decision of **Rodriguez (Flexibility policy) [2013] UKUT 00042 (IAC)** and found at [13] the Secretary of State should have contacted the appellant to inform him that his CAS was not valid and give him time to obtain a new CAS.

Permission to Appeal

7. Permission to appeal was granted by Judge Pooler on 15 April 2014. His reasons for granting permission were set out in paragraph 4 as follows:

“The grounds make reference to **SSHD v Rodriguez [2014] EWCA Civ 2**, in which an appeal against the decision of the UT was allowed, and submit that the judge failed to consider paragraph 245AA of the Immigration Rules, which incorporated ‘flexibility’ provisions into the Rules. The application discloses an arguable error of law.”

Error of Law Hearing

8. At the hearing before me Mr Kandola for the Secretary of State made submissions that the judge had erred firstly because he relied on the Upper Tribunal decision of **Rodriguez** and made a decision on the basis that the Secretary of State ought to give the claimant further opportunity in order to produce a valid CAS. However the Tribunal had heard evidence from the claimant that he had no valid CAS and would not be able to obtain the same until he proceeded on a new course.
9. His second submission was that in any event the Court of Appeal have now declared the law in **Rodriguez** and the Upper Tribunal decision has been overturned. The Section 47 removal decision was valid and the claimant would not be able to meet the requirements of Article 8 under the new Rules.
10. Mr Msechu responded by stating that he was currently finishing his dissertation which had to be submitted on 5 June 2014. He was receiving supervision from his university and if he were unable to finish the dissertation it would be a complete waste of his resources. He had paid all of the college fees and wanted to finish the dissertation. He was not able to obtain a valid CAS until he applied for a new course.

Discussion and Decision

11. I find a material error of law in the determination before First-tier Tribunal Judge Trevaskis. The Tribunal erred by applying the principles in **Rodriguez** as decided by the Upper Tribunal. The amended Rules under paragraph 245AA(b) and (c) were relevant and applicable from 6 September 2012. The undisputed position was that the claimant did not submit a valid CAS with his application. The claimant had further given evidence before the Tribunal that he would not be able to obtain a new CAS unless he enrolls for a new course [6].
12. I entirely agree with the submissions made by Mr Kandola and the same were not challenged by the claimant who accepted that at the time of his application he had no valid CAS which was a requirement of the Rules.
13. I am therefore satisfied that the decision taken by the Tribunal was wrong in law firstly because the Tribunal wrongly concluded that the evidential flexibility policy applied, wrongly concluded that the Upper Tribunal decision in **Rodriguez** applied and ultimately because the Court of Appeal judgment has overturned the Upper Tribunal decision in **Rodriguez**. The

Tribunal erred by way of a misdirection of law. Accordingly I set aside the determination and go on to remake the decision. I allow the appeal by the Secretary of State for the Home Department and I remake the decision by dismissing the claimant's appeal under the Immigration Rules.

Signed

Date 06.06.2014

Deputy Upper Tribunal Judge G A Black

1. No anonymity order made or requested.
2. No fee award.

Signed

Date 06.06.2014

Deputy Upper Tribunal Judge G A Black