



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: IA/50203/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 14th November 2014**

**Determination
Promulgated
On 28th November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

MISS SMITABEN MAHENDRABHAI PATEL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance – letter received from her Solicitors
For the Respondent: Mr T Wilding (Senior Home Office Presenting Officer)

DECISION ON ERROR OF LAW AND DETERMINATION OF APPEAL

1. On 30th November 2013, the Secretary of State refused to vary the appellant's leave to remain in the United Kingdom and also decided to remove her by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006. These decisions followed the appellant's application on 20th October 2013 for leave to remain as a Tier 4 (General) Student Migrant. She had earlier been given leave in the same category, in July 2011, and her leave was valid until 12th November 2013.

2. The appellant's appeal against the adverse decisions came before First-tier Tribunal Judge Wahlen ("the judge") on 29th May 2014. Although listed for an oral hearing, the appellant (through her solicitors) requested a determination "on the papers". The judge took into account evidence which included a witness statement made by her. He found as a fact that although the appellant's CAS was valid when she submitted her application for leave, it was withdrawn by her sponsor before the Secretary of State's decision following a dispute about fees. The judge noted that the CAS might be withdrawn or cancelled in certain circumstances, including the expiry of a sponsoring college's licence. He drew attention to guidance published by the Secretary of State providing that a person "should get 60 days leave to remain in the UK to be able to switch to a different sponsor". No such period of leave was given to the appellant by the respondent. The judge accordingly found that the adverse decisions were not in accordance with the law, by reason of a failure to act fairly or in accordance with guidance.
3. An application was made by the Secretary of State for permission to appeal. It was contended that any deficiency in the CAS was entirely a matter between the appellant and the sponsoring college and nothing to do with the Secretary of State. The Court of Appeal in Rahman [2014] EWCA Civ 11 held that in the circumstances of that case, fairness did not require the Secretary of State to give an appellant an opportunity to address any deficiency in a CAS. If it was the result of a mistake on the part of a sponsor, it was a matter to be pursued between the appellant and her college. In accordance with that guidance, the Secretary of State submitted that fairness did not require the invitation of further information regarding why the CAS was withdrawn. The Secretary of State's policy did not include a positive obligation to request information in every case where a CAS is withdrawn.
4. Permission to appeal was granted, in due course, by an Upper Tribunal Judge.
5. The appeal was listed for hearing at Field House on 14th November 2014. The day beforehand, the appellant's solicitors wrote to the Upper Tribunal indicating their client's wish that the matter be determined "by way of the papers submitted in the initial appeal". On the appellant's behalf, it was argued that the Secretary of State misunderstood Rahman, which was a case about academic progress not being mentioned in the CAS. In the appellant's case, withdrawal of the CAS was not simply a matter between the appellant and her sponsor. The appellant did not discover the reason for withdrawal of the CAS until after her refusal. This was "a Robinson obvious point" and Rahman could be distinguished.

Submissions on Error of Law

6. Mr Wilding said that it was not clear why the “60 day policy” had any bearing on the appellant’s case. As the judge found in the determination, withdrawal of the CAS followed a dispute about fees. This was not the Secretary of State’s concern. The decision in Thakur concerned a decision which led to unfairness. This was not the case in the present appeal where the dispute was between a sponsoring college and a student. Paragraph 14 of the determination had not been challenged at any stage and this contained the judge’s assessment of the evidence and the cause of withdrawal of the CAS. It was not clear how the “60 day policy” was relevant, especially where, as here, the appellant had made an application for further leave. Mention of a “Robinson obvious point” in the solicitors’ letter was inappropriate as this was a points-based system case.
7. I took into account the letter from the appellant’s solicitors and the submission made in it on the appellant’s behalf.

Conclusion on Error of Law

8. I conclude that the decision of the First-tier Tribunal contains a material error of law and must be set aside. It is clear from the witness statement which was before the judge that the CAS issued to the appellant was withdrawn following a dispute about fees. This is clear from paragraph 4 of that statement, which was made on 27th May 2014. In the same statement, the appellant indicated that she wished to enrol at a different college so that she could continue studying in the United Kingdom. There was nothing in the witness statement to suggest that the appellant had, by the time her case was determined by the judge in late May 2014, taken any particular steps to further that aim.
9. In any event, withdrawal of the CAS was clearly the result of a dispute between the appellant and her sponsoring college regarding payment of fees (and in her witness statement the appellant refers to a discussion she had with the college about this). It was not the concern of the Secretary of State, who simply decided the application made by the appellant in the light of the withdrawal of the CAS.
10. The guidance given by the Court of Appeal in Rahman is relevant. It was held (at paragraph 32) that fairness does not require the Secretary of State to give an appellant an opportunity to address any deficiency in a CAS. Naved and similar cases may be distinguished. In the present appeal, as in Rahman, there was no question of the Secretary of State obtaining additional information

without reference to the appellant and then relying on it to refuse the application. The Secretary of State simply applied the terms of the rules themselves. The cause of the withdrawal of the CAS was a consequence of a dispute between the appellant and her college, the Secretary of State not being involved. Although not available to the judge, the recent judgment of the Court of Appeal in EK (Ivory Coast) [2014] EWCA Civ 1517 supports the conclusion that there has been no unfairness in this case.

11. I conclude that the judge erred in finding that the appellant's leave fell to be curtailed to a period of 60 days, to give her an opportunity to find another sponsor. The decision of the First-tier Tribunal is set aside and must be remade.

REMAKING THE DECISION

12. Directions were sent to the parties in advance of the hearing, advising them that if the decision were to be remade, any evidence required should be filed and served so that it could be considered at the hearing. The appellant's solicitors helpfully indicated in their letter that the appellant relied upon the documents already submitted.
13. So far as the decision to refuse to vary leave is concerned, I conclude that the appellant has not shown that it was unlawful in any respect. The grounds of appeal to the First-tier Tribunal contain brief assertions that the appellant provided relevant documents in support of her application and that the Secretary of State should have contacted her so that another CAS could be obtained. It is contended that there was a failure to take into account fairness and so the decision was not in accordance with the law. Again, however, the cause of withdrawal of the CAS was not a matter for the Secretary of State and there is nothing to suggest that the appellant would have been able to obtain another CAS in any event. In her witness statement, she mentioned a conversation with a member of staff at her college, in which she was advised that the college was allocated only a limited number of documents and could not provide another CAS as none were left. As noted earlier, the witness statement, which was made several months after the adverse decisions, contains nothing to suggest that the appellant has taken any steps to enrol at a different college, save that she states that she made enquiries with a few Tier 4 sponsors but cannot be enrolled in view of her immigration status.
14. So far as the section 47 removal decision is concerned, the grounds suggest that the appellant relies "on the recent case law". As the decision was made in November 2013, it is not clear what is meant here.

15. The grounds also contain a single sentence indicating that the appellant relies on Article 8 of the Human Rights Convention. In this context, her witness statement contains no detail at all regarding any private or family life ties established here since she arrived in 2011. I have taken into account the guidance given by the Supreme Court in Patel [2013] UKSC 72 in this context. My primary finding is that the paucity of evidence shows that Article 8 is not engaged but, even if it were, there is nothing to show that any ties the appellant may have established here cannot be maintained from abroad and she may equally pursue further studies in the country of her nationality, should she wish to do so. There really is very little of any substance to put in the balance against the Secretary of State's case that her failure to comply with the Immigration Rules and the absence of anything to suggest that she is entitled to leave to remain combine to demonstrate the strong public interest in the maintenance of immigration control. The appellant has not shown that the adverse decisions, or her removal in consequence, breach her human rights.
16. In summary, the appellant has not made out her grounds of appeal. She has not shown that the decision to refuse to vary leave and the section 47 removal decision are unlawful, by reason of unfairness, a failure to apply relevant policy or on the basis that the decisions breach her human rights.
17. The decision of the First-tier Tribunal, having been set aside, it is remade as follows: appeal dismissed.

DECISION

Appeal dismissed.

ANONYMITY

There has been no application for anonymity at any stage in these proceedings and I make no direction on this occasion.

Signed
2014

Date **28th November**

Deputy Upper Tribunal Judge R C Campbell

FEE AWARD

As the appeal has been dismissed, there can be no fee award.

Signed
2014

Date **28th November**

Deputy Upper Tribunal Judge R C Campbell