



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

Appeal Number: IA/11759/2014

**THE IMMIGRATION ACTS**

**Heard at Laganside Courts, Belfast**

**On 30 October 2014**

**Determination**

**Promulgated**

**On 29 January 2015**

**Before**

**The President, The Hon. Mr Justice McCloskey**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**BAHADAR HUSSAIN**

Respondent

**Representation:**

For the Appellant: Mr Mills, Senior Home Office Presenting Officer

For the Respondent: Mr S McTaggart

**DECISION AND DIRECTIONS**

1. By a decision made on behalf of the Secretary of State for the Home Department (the "*Secretary of State*"), dated 12 February 2014, the Respondent's combined applications for leave to remain in the United Kingdom as a Tier 4 (General) Student and for a biometric residence permit were refused. The refusal was based on the fact that the Respondent was not in possession of a valid "Confirmation of Acceptance for Studies" ("CAS").

2. The ensuing appeal to the First-tier Tribunal (the "FtT") was allowed on the following basis:

*"The Appellant submits in his grounds of appeal that he had not realised that he had needed to submit a new CAS. He has now submitted a new CAS reference number [.....] ... and on that basis I find he has satisfied the requirements ..... under [paragraph 116(ea) of Appendix A to the Immigration Rules] and I allow the appeal to that extent."*

The Judge added:

*"I am however unable to determine whether he satisfies the maintenance requirements and I remit the appeal to the Respondent for a decision in relation to maintenance."*

3. I conclude that the decision of the FtT is unsustainable in law as it was based upon the Judge's consideration of newly provided evidence, contrary to the prohibition enshrined in Section 85A(4) of the Nationality, Immigration and Asylum Act 2002. This was conceded on behalf of the Respondent.

## **DECISION AND DIRECTIONS**

4. I decide and direct as follows:

- (a) The decision of the FtT is set aside.
- (b) I remit the case to a differently constituted FtT for the purpose of remaking the decision.
- (c) The further hearing will be listed on the first available date henceforth. The Appellant's legal representatives must give immediate attention to the question of whether the remaking is to be a paper exercise (as previously) or a conventional *inter partes* hearing, on payment of the appropriate fee and compliance with any other relevant formality.

*Seamus McCloskey*

MR JUSTICE MCCLOSKEY  
PRESIDENT OF THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER

**Date:** 30 October 2014