



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/12490/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 29 October 2015**

**Decision and Reasons
Promulgated
On 30 October 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

Mr SIMRANJIT SINGH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Bellara, Counsel (instructed by Louis Kennedy Solicitors)

For the Respondent: Ms A Fijiwalla, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant appealed with permission granted by Upper Tribunal Judge McWilliam on 30 July 2015 against the determination of First-tier Tribunal Judge Lingam who had dismissed the Appellant's appeal against the Secretary of State's decision dated 28 February 2014 in a determination promulgated on 17 December 2014. The Appellant is a national of India, who had applied for further leave to remain as a Tier 4 (General) Student Migrant, which was refused on the grounds that

(a) the Appellant had submitted a false document, i.e., an official transcript from London Thames College and (b) the Appellant had not submitted a current IELTS certificate to B2 level from an approved provider. The certificate which the Appellant had provided post dated the CAS and so could not have been taken into account when the CAS was issued. The reasons for refusal letter conveying the decision to refuse to vary the Appellant's existing leave incorporated a second decision to remove the Respondent by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006. The appeal had been determined by the judge on the papers as the Appellant had requested.

2. Judge McWilliam considered despite the grounds of appeal which were in parts incomprehensible that it was arguable that the test provider was City and Guilds which appeared on a version of Appendix O of the Immigration Rules, if this was the correct version, and thus was duly authorised.
3. A rule 24 notice dated 21 August 2015 opposing the onwards appeal was filed on behalf of the Secretary of State. Because no English language certificate was submitted with the CAS the appeal failed. The Appellant had been given a reconsideration of his original application made on 21 November 2012. A CAS was assigned to him on 28 December 2013 but the English language test was not completed until 7 January 2014. Thus it could not have been used to assess the Appellant's English. Judge Lingam's finding in the Appellant's favour on the false document issue was not challenged by the Secretary of State.
4. Mr Bellara for the Appellant candidly accepted that the Appellant's decision to have his appeal determined on the papers without representation had been unwise. The facts had been more than averagely complicated, as the judge had noted at [13] of her decision. The Home Office decision had originally been taken in 2012 but was subject of a reconsideration on 28 February 2014. A further difficulty was finding the correct version of Appendix O of the Immigration Rules. Counsel had been unable to do more in the time available than to consult the City and Guilds website, which stated that the City and Guilds had ceased to be a test provider from 6 April 2015 onwards. That implied that it had been registered at the material time. His instructing solicitors had provided a version of Appendix O which confirmed that City and Guilds were duly authorised at the date the Appellant sat the test.
5. Counsel further submitted that the evidence showed that the reason why the Appellant had submitted a test certificate which post dated his CAS was as he explained in his witness statement that he had mislaid the original. It had been easier simply to obtain a replacement. This was a situation where there had been unfairness to the Appellant and the decision should be found to be not in

accordance with the law and sent to the Secretary of State to be remade.

6. Ms Fijiwala for the Appellant relied on the rule 24 notice which the Respondent had served indicating that the onwards appeal was opposed. Ms Fijiwala confirmed that she, too, had been unable to find an authoritative text of Appendix O as at the date of the remade decision.
7. Mr Bellara reiterated by way of reply that the decision ought in all fairness to the Appellant to be remade.
8. At the conclusion of submissions, the tribunal indicated that it found that there were material errors of law, such that the original decision should be set aside and remade. The judge cannot be blamed for those errors, as this was a case which was not ideal for a determination on the papers. The First-tier Tribunal has power to require an oral hearing, but that power should only be exercised in exceptional cases, as it involves use of public funds. The present appeal could not be described as exceptional and so it was right that the judge did her best on what was before her. The Appellant must accept some of the blame for what went wrong.
9. It was for the Appellant to provide the correct copy of Appendix O of the Immigration Rules. He failed to do so until the Upper Tribunal hearing, and even then there was doubt. Even the Secretary of State's representative admitted that there were difficulties in finding the correct version. The tribunal forbears from further comment about that. The tribunal is, however, satisfied from Mr Bellara's researches that City and Guilds remained authorised until 6 April 2015. The tribunal takes judicial notice of the fact that City and Guilds are a City of London institution of high standing. The tribunal also infers that it is highly improbable that the Appellant who was seeking to put right a previous erroneous decision of the Secretary of State in 2012 would have gone to a test provider which was not authorised. He would not have wanted to have waste his time and money in that way. The Appellant was familiar with the procedures and had already sat a number of language tests. Unfortunately these questions were insufficiently considered by the judge, mainly because they were not brought to her attention.
10. There was a further difficulty with the judge's decision, in that the judge was not satisfied with the explanation that the Appellant had given for relying on a English language test result which post dated the CAS. In the context of the facts of this appeal, in the tribunal's judgment that explanation was relevant to the fairness of the Secretary of State's decision-making process. It did not automatically follow that the college had failed to assess the Appellant's English language ability when issuing the CAS. On its face, that was a recipe for future problems with the Home Office and thus an unwise course.

The Appellant had provided an explanation, which was plausible, namely that he had mislaid the original certificate. The Respondent should thus have sought further information from him, applying paragraph 245AA of the Immigration Rules.

11. In the result, the tribunal is satisfied that the judge inadvertently reached incorrect conclusions in what was a papers only appeal. Given the general confusion which the tribunal has found, not least as to the status of City and Guilds as a test provider so far as Home Office is concerned, the tribunal considers that the right outcome is that the 2014 decision should be revisited by the Secretary of State, because it was not made fairly and thus was not in accordance with the law. The tribunal adds that it may well be that any further leave to remain to the Appellant may be literally academic, in that he may well have finished the course in question and intend to depart the United Kingdom. No doubt this can be established when the decision is remade. The nature and type of any further leave granted will be a matter for the Secretary of State
12. The onwards appeal is accordingly allowed. The decision is remade to the extent that the tribunal finds that the Secretary of State's decision dated 28 February 2014 was not in accordance with the law and must be remade following the guidance in this determination.

DECISION

The making of the previous decision involved the making of a material error on a point of law. The decision is set aside and is remade as follows:

The Secretary of State's decision dated 28 February 2014 was not in accordance with the law and must be remade following the guidance in this determination.

Signed

Dated

Deputy Upper Tribunal Judge Manuell

TO THE RESPONDENT **FEE AWARD**

Although the appeal has been allowed to limited extent, no fee award is appropriate

Signed

Dated

Deputy Upper Tribunal Judge Manuell

