



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

Appeal Number: IA/31471/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 19th June 2015**

**Decision & Reasons
Promulgated
On 3rd July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR AMEENUDDIN MOHAMMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Kannangara (Counsel)
For the Respondent: Mr S Whitwell (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judges Spicer and Tiffen, promulgated on 12th January 2015, following a hearing at Taylor House on 15th December 2014. In the determination, the judges dismissed the appeal of Mr Ameenuddin Mohammed. The Appellant

subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of India, and was born on 25th May 1986. He appealed against the decision of the Respondent Secretary of State dated 21st July 2014 refusing him a variation of leave to remain in the UK because the college where he wished to study, namely, Vista Business College, was not listed on the Tier 4 business register and nor could the Appellant satisfy the Respondent that he had a valid CAS.

The Judge's Findings

3. The Tribunal held that the Appellant had submitted a Tier 4 (General) Student application on 5th October 2013 and provided details of his Sponsor as Vista Business College and provided a CAS number. The Respondent, however, wrote to the Appellant on 12th May 2014 informing him of the revocation of Vista Business College's licence. The letter duly informed the Appellant that he had a further 60 days in which to make a fresh application. The Tribunal held that the Appellant supplied a fresh CAS and made an application to vary his application. However, the fresh CAS was a conditional CAS. It was not a valid CAS. As for Article 8 there was no evidence that the Appellant has a family life in the UK. He is a single man in his Tier 4 (General) Student application form. There is no evidence he has a partner or children. He would have had no expectation to remain in the UK. The appeal was dismissed.

Grounds of Application

4. The grounds of application state that there is a procedural issue here. The Appellant's failure to attend the hearing on 15th December 2014 was due to the Appellant's legal representative having been informed by the AIT in the morning of 15th December 2014 that the hearing of that date had been "delisted". It was being suggested that the Appellant had been deprived of a fair hearing. There had been an administrative error in the procedure relating to the listing of the hearing.
5. On 25th February 2015, permission to appeal was granted. It was observed that a decision made on 12th November 2014 at Arnhem House by First-tier Tribunal Judge Hall dismissed the appeal without a hearing under Rule 19(4)(a) of the 2014 Rules on the basis that no Grounds of Appeal had been lodged. Furthermore, the appeal was dismissed because a notice issued by the Tribunal on 11th December 2014 to the Appellant and his legal representatives that there is no jurisdiction under the Procedure Rules to reconsider the Tribunal's decision of 12th November 2014, was issued.
6. This notice also stated that the Tribunal had two appeal files for the Appellant with the same appeal number and the other appeal file is at

Taylor House with the hearing date of 15th December 2014. The Arnhem appeal file would now be sent to Taylor House to be linked with that other file. However, the Appellant's legal representatives had submitted a copy of their 15th December 2014 letter faxed to the Tribunal stating that they had been informed by a Miss Jo of the AIT that 15th December 2014 hearing had been delisted. The judge who promulgated the 12th January 2015 decision made no reference to the 12th November 2014 decision made by the First-tier Tribunal Hall. There was accordingly an error of law.

7. On 11th March 2015 a Rule 24 response was entered by the Respondent. First, it is said that the First-tier Tribunal directed itself appropriately. The failure to attend the hearing undermined the credibility of the Appellant and made no material difference to the factual findings of why the appeal failed.
8. Second, the panel made clear findings on the "valid" as well as the "non-valid" CAS issue. This means that the Appellant could not have succeeded in any event because he had a non-valid CAS. The withdrawal of the licence from Vista College meant that the Appellant was given six days to find another college and he only provided a conditional CAS.
9. Third, in relation to Article 8 the panel held (at paragraph 26) that, "although Article 8 is raised, there is no evidence that the Appellant has a family life in the United Kingdom". He was single. He had no partner. He had no children. The appeal was bound to fail.
10. In reply, Mr Kannangara submitted that on 13th December 2014, the Appellant received a letter which was dated 11th December 2014, stating that the decision could not be reconsidered. Two appeals were listed with the same number. One appeal was being heard on 15th December 2014. The Appellant received this information on Saturday 13th December. On 15th December 2014, which was the date of the hearing, the Appellant contacted his legal representative with the letter of 11th December 2014. The legal representative on that same day contacted the AIT who confirmed to him that the hearing on 15th December 2014 was delisted. Plainly, submitted Mr Kannangara, the Appellant was entitled to attend his own hearing.

Error of Law

11. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law such that I should set aside the decision (see Section 12(1) of TCEA 2007). My reasons are as follows. This is a case where as early as September 2014 the Appellant's solicitors had sent him Grounds of Appeal. For some reason they had not been placed before the Tribunal. The Tribunal proceeded on the basis that no Grounds of Appeal had been submitted, that the Appellant was not in attendance, and that the appeal was bound to fail. Rule 26 of the Procedure Rules makes it quite clear that, "the Tribunal must give each party entitled to attend a hearing reasonable notice of the time and place

of the hearing (including any adjourned or postponed hearing) and any changes to the time and place of the hearing". The Appellant has been denied the right to a fair hearing. He has not had the opportunity to put his case.

12. Accordingly, under Practice Statement 7.2 I conclude that the effect of the error has been to deprive the party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put. This being so, this matter is remitted back to the First-tier Tribunal to be heard by a judge other than Judges Spicer and Tiffen in a de novo substantive hearing.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original Tribunal. I remake the decision as follows. This appeal will be remitted back to the First-tier Tribunal to be heard by judges other than Judges Spicer and Tiffen in a de novo substantive hearing under Practice Statement 7.2. No previous findings will be preserved.

No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

1st July 2015