



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

Appeal Number: IA/34815/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 24th March 2015**

**Determination
Promulgated
On 15th April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**ZUNAID HOSSAIN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Miss J Isherwood (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Lucas, promulgated on 9th December 2014, following a hearing at Taylor House on 28th November 2014. In the determination, the judge allowed the appeal of the Appellant to the extent that it was remitted back to the Secretary of State for a further reconsideration. The Respondent Secretary of State, 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 citizen of Bangladesh, who was born on 11th November 1983. He appealed against the decision of the Respondent Secretary of State, dated 8th August 2013, to refuse to grant him further leave to remain in the UK as a Tier 4 (General) Student Migrant under paragraph 245ZX(c) of HC 395 (as amended).

The Appellant's Claim

3. The Appellant's claim is that the decision by his college to withdraw his CAS is "completely unknown" (paragraph 4) as he had leave to remain in the UK between 28th December 2009 and 31st May 2013. He referred to the tier policy document (Version 07/2013 page 64), which states that,
"If your permission to stay has expired whilst you are awaiting a decision on your application, you will delay the refusal of your application for 60 days to allow you to obtain a new CAS from a different Sponsor and vary your application for leave in the UK" (see paragraph 5 of the determination).
4. The Appellant argued that the Respondent Secretary of State had not followed the applicable guidance in place at the time with regard to the 60 day period.
5. The judge allowed the appeal to the extent that the appeal should be remitted to allow the Appellant a further 60 days to obtain a new CAS. The appeal was allowed to that extent.

Grounds of Application

6. The grounds of application state that the judge had misapplied the Tier 4 policy document (Version 07/2013), because the reference to page 64 therein, is a reference to the Tier 4 Sponsor's Licence having expired, being revoked, or having been surrendered. This was not such a case. In this case, it was the college itself that had withdrawn the Appellant's CAS. This was a matter between the college and the Appellant.
7. On 29th January 2015, permission to appeal was granted.

Submissions

8. At the hearing before me on 24th March 2015, there was no attendance by the Appellant. Nor, was there any explanation for his non-attendance. Nor indeed, was a legal representative present. Miss Isherwood, appearing on behalf of the Respondent, submitted that the case of **Rahman [2014] EWCA Civ 11** was decisive. In this case, the court had said (at paragraph 32) that, :-

"... Nevertheless, I agree with the Tribunal that the situation here is very different from that in **Naved** and that fairness did not require the Secretary of State to give the Appellant an opportunity to address any deficiency in the CAS. There was no question in this case of the Secretary of State obtaining additional information without reference to the applicant and

relying on it to refuse the application. The Secretary of State simply applied the terms of the Immigration Rules themselves. Under the Rules it was the Appellant who had the responsibility of ensuring that his application was supported by a CAS that met the requirements laid down.”

9. Accordingly, Miss Isherwood submitted, that the judge was wrong to remit the matter back to the Secretary of State. The appropriate course of action was to dismiss the appeal outright.

Error of Law and Re-making the Decision

10. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law, for the reasons that had been given by Miss Isherwood before me, and that I should set aside the decision and remake the decision (see Section 12(1) and Section 12(2) of TCEA 2007). There is a distinction between a Sponsor’s Licence having expired, or revoked, or surrendered, and a student’s CAS number having been withdrawn by the college itself. The case of **Rahman** is decisive.
11. There is no duty on the Secretary of State to do other than to apply the terms of the Immigration Rules themselves. The Appellant is not entitled to a 60 day period that he claims. The matter is between the Appellant and the college. This is clear from Annex 2: Tier 4 Sponsor Duties and Licence Status, of the policy document relied on. Given that the judge has erred, I proceed to remake the decision. I have remade the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today. I am dismissing the appeal for the reasons that I have given. The Appellant did not have a CAS. He could not succeed under the Rules. The Appellant has not attended today and has not put forward any other submissions.

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 judge. I remake the decision as follows. This appeal is dismissed.

No anonymity direction is made.

Signed

Dated

Deputy Upper Tribunal Judge Juss

11th April 2015