



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

Appeal Number: IA/38436/2014

THE IMMIGRATION ACTS

**Heard at Field House
on 1 June 2015**

**Determination
Promulgated
On 5 June 2015**

Before

**UPPER TRIBUNAL JUDGE PITT
UPPER TRIBUNAL JUDGE BLUM**

Between

SACHIN BHUPENDRABHAI PATEL

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Norman, instructed by YD Visas

For the Respondent: Mr Walker, Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

- 1.** This is an appeal against a determination of First-tier Tribunal Judge Agnew promulgated on 5 February 2015 which dismissed the appellant's appeal against the refusal of leave to remain as a Tier 4 (General) Student.

2. The appellant applied on 28 June 2014 for further leave to remain as a student. The application was refused on 10 September 2014 by the respondent.
3. The application was refused for two reasons. Firstly, the respondent maintained that the appellant was sent letters on 11 July 2014 and 31 July 2014 inviting him to an interview to assist in the assessment of the application. The letters indicated that if the appellant failed to attend without prior agreement this “may” result in the application being refused. The respondent maintained that the appellant did not respond to the letters and did not attend.
4. The application was then refused under paragraph 322(10) of the Immigration Rules. This provides that an application for leave to remain “should normally” be refused where there is a “failure, without providing a reasonable explanation, to comply with a request made on behalf of the Secretary of State to attend for interview”.
5. The grounds of appeal to the First-tier Tribunal maintained that the appellant did not receive the letters inviting him to an interview. There was no witness statement to this effect or any other documentation to support this assertion. The appellant elected to have his appeal considered on the papers.
6. Judge Agnew found at [11]-[14] and [17] that it was not credible that the appellant had not received the interview letters, that he had not provided a reasonable explanation for failing to attend and that the decision to refuse under paragraph 322(10) was rightly made.
7. We could see nothing about that finding that approached an error on a point of law. As above, before the First-tier Tribunal there was only an assertion in the grounds that the appellant did not receive the interview letters, not even a letter or witness statement from the appellant. Nothing precluded the appellant from adducing further evidence in relation to the 322(10) refusal. It was open to Judge Agnew to place weight on the letters having been sent to an address that, but for only those two particular interview letters, had not been shown to be problematic.
8. Ms Norman sought to argue that the First-tier Tribunal should have required the respondent to show better evidence of service and receipt of the interview letters. We did not agree where the respondent’s case on the point was clear, copies of the letter were provided, the address had not been shown to be otherwise defective and there was nothing more from the appellant for consideration by the First-tier Tribunal. The invitation letters were not, in our view, analogous to immigration decisions that might require the respondent to comply with formal notices regulations or bear a higher burden of showing good service and receipt such as in the case of Syed (curtailment of leave – notice) [2013] UKUT 00144 IAC.

- 9.** Ms Norman also suggested that the First-tier Tribunal should have taken into account the large amount of documentation that accompanies a refusal decision whereas the interview letter would have been a smaller piece of correspondence and thus potentially more likely to be mislaid or somehow not received. There was nothing to indicate that this was something the First-tier Tribunal judge was asked to take into account. It did not appear to us something of sufficient force capable of making a difference to the conclusion of the First-tier Tribunal judge, in any event, additionally so where the interview letters enclosed other documents, an interview reply form and a declaration.
- 10.** We concluded that no error arose in the decision of the First-tier Tribunal that the appeal had to be refused in line with paragraph 322(10) of the Immigration Rules.
- 11.** Where that was so, it was not strictly necessary to proceed to consider the appellant's second ground of appeal which concerned the Certificate of Acknowledgement of Studies (CAS) submitted with the application. As we heard detailed argument on the point, however, we can give a brief view here.
- 12.** The respondent also refused the application as at the date of the decision the CAS relied upon by the appellant was marked as withdrawn. As we understood it, the appellant maintains that his CAS assigned on 26 June 2014 was withdrawn in error as a result of his college being suspended by the respondent.
- 13.** An immediate difficulty with that part of his argument is that we did not have any evidence to show that this was why his CAS was withdrawn. There is a reference in a document entitled "Home Office immigration action against education institutions: factsheet" to the suspension of his college on or after 24 June 2014. There was nothing before the First-tier Tribunal or us to show the specific date of suspension, however, or whether it was by 4 August 2014 when the CAS at appendix C of the respondent's bundle shows it had been withdrawn.
- 14.** There was also nothing before us in the factsheet or elsewhere indicating that colleges were instructed to withdraw a CAS if they were suspended by the respondent or that the appellant's college did withdraw his CAS on this or some other erroneous basis.
- 15.** Even had the appellant shown that his college withdrew his CAS on a mistaken basis, it would be the fault of the college, not the respondent who was entitled to make a decision on 10 September 2014 on the basis of the information before her which indicated that the CAS had been withdrawn. The factsheet relied upon by the appellant does not preclude the respondent making a decision to refuse where a CAS is withdrawn by a college.

- 16.** We drew support for this view from the case of EK (Ivory Coast) v SSHD [2014] EWCA Civ 1517. The undisputed facts there were that the appellant's CAS was wrongly withdrawn by her college and that she did not know of this until informed in the respondent's refusal. Even where this was so the Court of Appeal concluded at [51] and [52] that the respondent was entitled to rely on the withdrawal without having to give the claimant an opportunity to comment even though she did not know of the withdrawal until being informed of it in the respondent's refusal letter.
- 17.** The facts before us are, in addition, less supportive where it is unclear why the CAS here was withdrawn by the college and the First-tier Tribunal was entitled to conclude at [15] that it was not credible that the appellant did not know of the withdrawal of his CAS where he could be expected to have been in touch with his college at material times.
- 18.** Ms Norman submitted that the appellant could not be expected to provide evidence as to the suspension of his college and reason for withdrawal of the CAS as he was precluded from doing so by paragraph 85A of the Nationality, Immigration and Asylum Act 2002. It did not appear to us that this could allow him to rely on mere assertion as to what happened, effectively usurping the provisions of s.85A. In addition, the arguments about the CAS, if properly formulated, really go towards a case that the respondent's decision gave rise to an Article 8 fairness case, which is not restricted as to evidence by s.85A, as opposed to a claim that the substantive Points Based System provisions of the Immigration Rules could be met to which the s.85A evidential restrictions would apply.
- 19.** For all of these reasons, we did not find that the First-tier Tribunal Judge erred in law.

Decision

- 20. The determination of the First-tier Tribunal does not disclose an error on a point of law and shall stand.**

Signed: 
Upper Tribunal Judge Pitt

Dated: 2 June 2015