



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/39450/2014

THE IMMIGRATION ACTS

Heard at Field House
On 7 October 2015

Decision & Reasons Promulgated
On 14 October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

RAJIB CHANDRA SAHA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms T Murshed, Counsel instructed by Richmond Chambers
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Turquet promulgated on 21 April 2015. It concerns the appellant, Rajib Chandra Saha, born on 1 January 1980 and a citizen of Bangladesh.

2. The appellant came to the United Kingdom in September 2007 with entry clearance as a student valid until 31 December 2008. He was granted further leave, first as a Tier 4 (General) Student and then as a Tier 1 HS (Post-Study) Migrant lasting from 23 August 2011 until 23 August 2014. On 21 August 2014 the appellant made a combined application for further leave to remain in the United Kingdom as a Tier 2 (General) Migrant and a biometric residence permit. That application was refused on 19 September 2014 and a removal direction was made accordingly.
3. The appeal against that refusal and the removal direction came before the First-tier Tribunal. The determination sets out that the appellant had been offered a job as business development manager of an organisation known as "The From Boyhood to Manhood Foundation" carrying a gross salary of some £22,000 per annum. This employment was due to commence in September 2014. The sponsor issued the appellant with a certificate of sponsorship (COS) in order that he could apply for further leave.
4. What then happened, and what really lies at the heart of this appeal, is that while the appellant's application was pending, for reasons which are unknown, the organisation withdrew its COS. Neither the organisation - as sponsor - nor the Home Secretary informed the appellant of that withdrawal. Although it does not appear in the determination (nor I understand in the underlying documentation), I have been told today by Ms Murshed, and it does not appear to be disputed, that we are concerned with an online system and that a sponsor can at any time effectively 'untick' the certificate of sponsorship box thereby withdrawing the COS. This can be done unilaterally and it does not trigger any form of automatic notification to an applicant.
5. It appears that the appellant was taken aback when informed of the decision to refuse his leave and to compel his removal because until that moment he was not aware that the COS had been withdrawn by his sponsor. The First-tier Tribunal Judge examined the points-based manner in which leave of this type is determined and came inevitably to the conclusion that in the absence of such a certificate it was impossible for this appellant to achieve the requisite score. There is no appeal in relation to these factual matters which are undisputed.
6. The appellant's complaint is that the system operated by the respondent was itself procedurally unfair both as a matter of its general application and also as it specifically impacted on the appellant. It was contended that what the Secretary of State should have done was to have allowed further time within which the appellant could have explored finding an alternative COS.
7. Reliance was placed on **Thakur (PBS decision - common law fairness) Bangladesh [2011] UKUT 00151 (IAC)**. That is a decision of Mr Justice Simon sitting with Senior Immigration Judge Latta which deals with the question of Tier 4 (General) Student Migrants in receipt of sponsorship from an institution whose licence is withdrawn. The headnote makes reference to:

“a failure to comply with the common law duty to act fairly in the decision making process when an applicant had not had an adequate opportunity of enrolling at another college following the withdrawal of his sponsor’s licence or of making further representations before the decision was made.”

8. In the judgment in Thakur, reference is made to Home Office policy guidance issued in relation to this type of ‘education’ case which provides that where a Tier 4 sponsor licence is withdrawn the normal position would be to allow a student already studying in the UK 60 days’ further leave if he or she was not involved with the reasons why the licence was withdrawn. This affords the student the opportunity of applying for permission to study with another Tier 4 sponsor.
9. The judge made reference both to the case of Thakur and to the more recent case of Naved (Student - fairness - notice of points) [2012] UKUT 14. The judge was not satisfied that a proper analogy could be made between those education cases where a college is either closed or its licence is withdrawn which then compels a batch of students to find alternative sponsorship certification. The judge was satisfied that the Secretary of State did not act unreasonably nor did she breach the requirement for procedural fairness in not giving notice to the appellant that in his case the COS had been withdrawn.
10. In my assessment the judge was correct not to analogise between the education cases and the workplace situation. Although in a strict sense both types of certificate are personal to the individual named, they are very different in type. One is institutional, relating to a specific place of education approved by way of a licence and the other exists in the free market of employment. In this instance the Secretary of State was in no way complicit in the decision of the sponsor to withdraw the job offer. This was not, for example, a case of the Secretary of State intervening to close down a college or to take away its licence.
11. The Secretary of State cannot provide for each conceivable circumstance. Employers are at liberty to withdraw their offers of employment. It would be placing the duty too high for the Secretary of State to have the level of individual engagement contended for by the appellant in cases of this type. The fact that the withdrawal of the job offer may have significant ramifications for the appellant is regrettable but all that the Secretary of State can properly do is to deal with the application on the information available when the matter is determined. That information clearly indicated that there was no COS in place because it had been withdrawn. There is no express or implied obligation upon the Secretary of State to bring this to the appellant’s attention or to afford him time to find a fresh COS.
12. The evidence of what may or may not have happened had the appellant been notified of the withdrawal if the COS may be of little relevance and Ms Murshed invited me to disregard it. Paragraph 15 of the determination states as follows:
 “I found the Appellant’s evidence in respect of his prospective claimed employment unconvincing. He did not know how many people were employed

but said his job was to delegate the jobs between the employees. He knew it was a charity but, since [presumably, the refusal letter] he has made no enquiries about what has happened to the charity, although it is no longer where it was. The only information he had seen from the Home Office website was that the charity was established.”

It seems that the judge had certain misgivings concerning both the offer of employment and the status of the prospective employer and, despite hearing oral evidence from the appellant and submissions from his legal representative, those concerns were not allayed. Paragraph 15 is not the subject of any ground of appeal.

13. The appeal, as it was advanced in oral submissions before me, was put on the more expansive basis that the system which had been put in place and operated by the Secretary of State was flawed due to inherent procedural unfairness. It was said that the fact that a sponsor could at any time ‘untick’ a box on the online system thereby withdrawing its COS without notice to the applicant compromised the entire system. This argument was pursued with tenacity.
14. Paragraph 9 of the Grounds of Appeal complains that the appellant “was not given the slightest opportunity to challenge the withdrawal, or to find a new sponsor or to vary his application”. There was no material before the judge or before me to suggest that the withdrawal was a mistake by the employer and any challenge would seem to be a private matter between the appellant and the putative employer. As was argued by Ms Everett, it was through no fault of the Secretary of State that the offer of employment and/or the COS were not in place when the matter was determined. There is no policy guidance or other indication from the Secretary of State that these cases are to be treated similarly to the education cases. This is unsurprising as the scenarios are quite different. It was argued before me that in consequence of the refusal, the immigration status of the appellant changed thereby making it more difficult for him to secure an alternative COS from a different employer. Had he been notified of the withdrawal of the COS he could have withdrawn his application thereby avoiding an adverse determination. Even if this is correct, and on the information before me I can make no specific finding, I do not consider that it amounts to unfairness on the part of the Secretary of State. Her decision was properly made irrespective of the effect it may have had on this particular appellant.
15. Reference was made to **R (on the application of Q and others) v Secretary of State for the Home Department** [2003] EWCA Civ 354 in which judgment the well-known passage from Lord Mustill in **R v Home Secretary ex parte Doody** [1994] 1 AC 531 at 560 was cited. I note in particular Lord Mustill’s observation that “the principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision and this is to be taken into account in all its respects”. I am not persuaded that fairness required the Secretary of State to notify the appellant that his sponsor had withdrawn its COS. The obligation was on the appellant to make an application which was robust and sustainable from the outset. Here the judge made a specific finding at paragraph 15 of the

