



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

Appeal Number: IA/41059/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 26 January 2015**

**Determination
Promulgated
On 27 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR MD. AMINUL ISLAM
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: (On file - London Law Associates). No attendance

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The application for permission to appeal was made by the Secretary of State but for the purposes of this decision I shall refer to the parties as they were described before the First Tier Tribunal, that is Mr Aminul as the appellant, and the Secretary of State as the respondent.

2. The appellant is a citizen of Bangladesh born on 15 May 1988 and appeals against a decision to refuse him leave to remain as a Tier 4 Student Migrant under the points-based system (PBS) under paragraph 245ZX(c) with reference to paragraph 116(e) of Appendix A and paragraph 245ZX(d) of the Immigration Rules.
3. The appellant made an application on 31 August 2012 for leave to remain and that application was refused on 19 September 2013.
4. The respondent set out in the reasons for refusal letter that the appellant had claimed 30 points under Appendix A for a valid Confirmation of Acceptance for Studies (CAS) assigned by St. John's College, London. However the Secretary of State was not satisfied that he had a valid CAS because the Tier 4 sponsor register was checked on 19 September 2013 and St. John's College Limited was not listed at that date. The appellant's claim was also rejected under Appendix C of the Immigration Rules in respect of funds.
5. Specifically it was stated that the CAS the appellant had submitted with his application referred to reference number E4G1JL3C16POQ6 was assigned by St. John's College. The Tier 4 Sponsor Register was checked on 19 September 2013 and St. John's College Limited was not listed as a Tier 4 Sponsor on that date.
6. The reasons for refusal letter dated 19 September included the following statement:

"On 25 July 2013 you were informed of this and allowed 60 days to obtain a new sponsor and CAS, however you have not provided a new CAS within that period.

As such, you are not in possession of a valid CAS and so have not met the requirements of the rules. Therefore, no points have been awarded for your CAS."
7. The appellant had submitted an application giving his address as 24 Mayfield Road, Birmingham B19 1RL. At all times this was his address.
8. First-tier Tribunal Judge Walters on 29 October 2014 allowed the appeal on the papers stating, at paragraph 10, the following:

"The Grounds of Appeal state that as at the date of application (31.8.12) St. John's College was a listed Tier 4 Sponsor. The appellant continues to submit that if, by the time the decision was made (19 September 2013) the Tier 4 Sponsor licence of St. John's College had been revoked by the respondent then the appellant should have been given 60 days to apply to a new college and to provide a new CAS following the case of Patel (Revocation of Sponsor Licence - fairness) India [2011] UKUT 00211."
9. It should be noted that the First-tier Tribunal recorded on 29 July 2014 that there was a request for a paper hearing made by the appellant and a direction was given by another Judge, First-tier Tribunal Judge Clarke, to

the effect that the respondent should serve on the appellant's representatives and to the Tribunal Service within 21 days evidence that St. John's College Limited was not listed on the Tier 4 Sponsor Register. This direction was issued on 5 August 2014. There appeared to be no response to that direction.

10. At paragraph 11 of the determination of Judge Walters it was stated, "*I took into account what was said in Patel's case has been adopted by the respondent as a policy. She clearly has not followed that policy, nor complied with Directions*" (sic).
11. An application for permission to appeal was made which pointed out paragraphs 10 and 11 as cited above and stated that in fact the respondent had pointed out that on 20 July 2013 the appellant was informed of this (St. John's College no longer being on a register) and allowed 60 days to obtain a new sponsor and CAS. The judge made no reference to this.
12. Permission to appeal was allowed by First-tier Tribunal Judge Pirotta on the basis that the judge had not taken into account all the evidence and was misled by the failure of the Secretary of State to comply with the directions though the failure would have been of no effect as the appellant did not challenge the facts stated by the Secretary of State that the original college had lost their sponsor status by the date of the decision.
13. At the hearing Mr Whitwell submitted that he relied on the grounds for permission to appeal and the short point was that the judge had not taken into account the fact that the respondent had indeed given the appellant 60 days to enrol with an alternative sponsor and produce a new CAS. The fact that the directions were not complied with was immaterial.
14. My findings are that nowhere in the determination was there any reference made by Judge Clarke to the fact that the respondent claimed the appellant had been allowed 60 days to obtain a new sponsor. This was a material fact which was not taken into account.
15. I therefore set aside the determination decision of Judge Walters and re-make the decision.
16. Enquiries were made of London Law Associates who failed to attend at the hearing. A notice of the hearing including the date, time and venue was served on London Law Associates on 19 December 2014. At no point had the appellant advised the Tribunal that he no longer instructed London Law Associates and no correspondence had been received from London Law Associates. I find that the appellant was properly served with the notice of the hearing and that the matter should proceed in the absence of representation or the appellant. On telephone enquiries made by the clerk prior to the re-making of the decision there was no response.

17. In compliance with The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) two letters were produced, written from the respondent to the appellant at the appellant's address given in the application form and dated 24 June 2013 and 25th July 2013. These confirmed that on 19 February 2013 the UK Border Agency made a decision to revoke the licence of St. John's College, Limited and therefore the CAS he had submitted with his outstanding application was no longer valid and his application would fall to be refused.

18. Particularly the letter dated 24th June 2013 stated that:

"Before the final decision is made and in line with our Rules and guidance we will suspend consideration of your application for a period of 60 days. (During this 60 day period it is open to you to withdraw your application and submit a fresh application in a different category or to leave the United Kingdom)."

This letter pointed out that it was open to the appellant to obtain a new CAS for a course of study at a fully licensed Tier 4 educational sponsor and then submit an application to vary the grounds of his original application.

19. A further letter dated 25 July 2013 was sent to the appellant from the respondent confirming that rather than having to pay he could return the enclosed application form. Once again this stated that on 19 February 2013 the UK Border Agency had revoked the licence of St. John's College and that his existing CAS was no longer valid.

20. I find that the appellant had been notified on two occasions that the CAS from St. John's College was no longer valid. He had been given a 60 day period within which the appellant failed to submit a further application.

21. In his grounds of appeal the appellant stated that he should have been given 60 days to send in a new CAS which indeed he was.

22. I find from the evidence presented that there was no unfairness exacted upon the appellant. He was given by way of the letter of 24 June 2013 adequate opportunity to submit a new CAS and he failed to do so.

23. **EK (Ivory Coast) v Secretary of State for the Home Department [2014] EWCA Civ 1517** refers to the "*fair balance to be struck between the public interest in having the PBS regime operated in a simple way and the interests of the particular individual who may be detrimentally affected by such operation*". The Secretary of State was aware of the change of position in relation to St. John's College and indeed had brought the facts and effects on the appellant's case to his attention.

24. In sum the appellant cannot comply and could not comply with the Immigration Rules at the date of his application and despite correspondence from the respondent, failed to provide a new CAS. There was no unfairness in the approach of the Secretary of State.

25. The appellant requested that this matter be dealt with on the papers and submitted no further evidence in support of his application and I find that even if his Article 8 private life was engaged, the decision to refuse to vary his leave to remain is not disproportionate, **Patel and ors v SSHD [2013] UKSC 72, Nasim and others (Article 8) [2014] UKUT 00025 (IAC)**, Section 117B of the Nationality Immigration and Asylum Act 2002. He entered the United Kingdom in 2009 to study, can have had no expectation of being able to remain and always knew that his leave was temporary.
26. I therefore refuse the appeal under the Immigration Rules and on human rights grounds.

No anonymity direction is made.

Signed

Date 26th February 2015

Deputy Upper Tribunal Judge Rimington

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Rimington