



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

Appeal Number: IA/48180/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 11<sup>th</sup> December 2015**

**Promulgated**

**On 22<sup>nd</sup> December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**MISS SHABNAM**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr. Jaisri of Counsel instructed by Deccan Prime Solicitors

For the Respondent: Mr. Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against a decision by First-tier Tribunal Judge Howard promulgated on 1<sup>st</sup> July 2015, in which he dismissed an appeal against the decision of the respondent of 18<sup>th</sup> November 2014, to refuse an application for leave to remain in the UK as a Tier 4 (General) student.
2. Permission to appeal was granted by First-tier Tribunal Judge Page on 5<sup>th</sup> October 2015. The matter comes before me to consider whether or not the determination by First-tier Tribunal Judge Howard involved the making of a material error of law, and if so, to remake the decision.

## **Background**

3. The appellant first entered the UK on 10<sup>th</sup> March 2011 with entry clearance conferring leave to enter until 28<sup>th</sup> April 2012 as a Tier 4 (General) student. On 28<sup>th</sup> April 2012, the appellant made a combined application for leave to remain in the UK as a Tier 4 (General) student and for a Biometric Residence Permit. The application was first refused on 19<sup>th</sup> February 2014 and a removal decision was made on 12<sup>th</sup> August 2014. The appellant commenced a claim for Judicial Review and the respondent withdrew the decisions of 19<sup>th</sup> February and 12<sup>th</sup> August 2014.
4. The respondent served a decision dated 18<sup>th</sup> November 2014 and it was the appellant's appeal against that decision, that gave rise to the decision of First-tier Tribunal Judge Howard promulgated on 18<sup>th</sup> November 2014.
5. The respondent was not satisfied that the appellant met the requirements of paragraph 245ZA(a) of the Immigration Rules. In her decision, the respondent states:

*"The Secretary of State is satisfied you have failed to produce, within a reasonable time, information, documents or other evidence required by the Secretary of State to establish your claim to remain under these Rules;*

*We wrote to you on the 16 December 2013 giving you 60 days, to 14 February 2014, in which to submit further information but have not received a response to date. On 30 January 2014 it was identified that you had moved to a new address without informing the Home Office, and a further letter was sent to you on 31 January 2014 to advise you that your application could not be approved unless you submitted further information by 14 February 2014. Therefore your application has been assessed on the documentation previously submitted and available at the time of consideration...*

*You have claimed 30 points under Appendix A of the Immigration Rules for a valid Confirmation of Acceptance for Studies (CAS) assigned by London International College of Management, However, the Secretary of State is not satisfied that you have a valid CAS because the Tier 4 Sponsor Register was checked on 16 December 2013 but London International College of Management was not listed as of this date. Therefore you have not met the requirements to be awarded 30 points under Appendix A of the Immigration Rules..."*

6. The appellant was awarded no points under Appendix A (Attributes). The respondent stated:

*"In order for points to be awarded, a Confirmation of Acceptance for Studies (CAS) must be assigned by a sponsor with a Tier 4 Sponsor Licence and that sponsor must still hold such a licence on the date that the student's application is determined.*

*The CAS that you submitted with your application, with reference number E4G9RP0C14J0A6, was assigned by London International College of Management. The Tier 4 Sponsor Register was checked on 16 December 2013 and London International College of Management were not listed as a Tier 4 Sponsor as of this date. On 16 December 2013, and again of 31 January 2014, 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 you have not met the requirements of the rules. Therefore, no points have been awarded for your CAS."*

7. As the appellant has not provided a valid CAS with her application, the respondent also awarded no points for maintenance funds.

### **The appeal before the First-tier Tribunal**

8. Notice of the hearing on 6<sup>th</sup> May 2015 was issued to the parties on 22<sup>nd</sup> January 2015. The directions issued by the First-tier Tribunal provided that the appellant must send to the Tribunal and to the respondent, as soon as they are available, a bundle of all documents upon which she wishes to rely in support of the appeal. On 5<sup>th</sup> May 2015, the day before the hearing of the appeal, the appellant's representatives faxed to the Tribunal a small bundle of documents which included a number of documents in relation to the Judicial Review claim brought by the appellant against a previous decision of the respondent, and a witness statement of the appellant signed by her on 5<sup>th</sup> May 2015. The covering letter stated *"We are herewith enclosing the following documents and request you to consider these documents as part of the Appeal and decide on papers only."*

9. On 6<sup>th</sup> May 2015, First-tier Tribunal Judge Howard heard the appeal and dismissed it for the reasons set out in a decision promulgated on 1<sup>st</sup> July 2015. Paragraphs [2] to [5] set out the background to the respondent's decision of 18<sup>th</sup> November 2014 and the appeal before him. The decision records at paragraph [8]:

*"The appellant was not at court...The Notice sent to the representative drew a bundle dated the 5<sup>th</sup> January 2015 in which they state they have instructions from the appellant requesting the appeal be considered on the papers."*

10. The findings of the Judge are set out at paragraphs [11] to [14] of the decision. Insofar as is material to the appeal before me, at paragraph [11], the Judge states:

*"The appellant submitted no bundle. Thus I must decide the appeal on the material contained within the respondent's bundle."*

11. The Judge found that the appellant still has no CAS and has provided no evidence of any continuing studies or other activities in the UK that could constitute a private or a family life. He found that the appellant

had not discharged the burden of establishing an entitlement to the leave that she seeks, and that the requirements of paragraph 245ZX of the Immigration Rules are not met.

### **The Grounds of appeal**

12. The appellant states that the Judge erred in his failure to take into account the documents that had been submitted by the appellant in advance of the hearing. It is said that there is an inconsistency between what is said at paragraphs [8] and [11] of the decision. Paragraph [8] refers to the Notice sent to the representative, drawing from them, a bundle dated the 5<sup>th</sup> January 2015, whereas paragraph [11] states the appellant submitted no bundle. The second ground relied upon by the appellant is that the Judge erred in failing to consider the evidence of the appellant that the respondent failed to adduce any evidence that she has served a “60-day” letter upon the appellant, and that in the absence of such a letter, it is not possible for the appellant to secure a new CAS. The appellant submits that the failure to make findings upon the evidence relied upon by the appellant, demonstrates a failure to give anxious scrutiny.
  
13. At the hearing before me, Mr Jaisri on behalf of the appellant adopts the grounds and submits that the issue as to whether the 60-day curtailment letter had been received by the appellant is central to the appeal. In her witness statement, the appellant contends that it was not received, whether on or about 16<sup>th</sup> December 2013 or 31<sup>st</sup> January 2014. He submits that following an exchange of emails between the appellant and an officer of the respondent on 30<sup>th</sup> January 2014, it was identified that the appellant had moved to a new address. He submits that whilst the respondent’s decision states that a further letter was sent to the appellant on 31<sup>st</sup> January 2014, the appellant’s evidence is that the appellant has never received that letter.

14. The respondent has filed a Rule 24 response. The respondent opposes the appeal and submits that the Judge directed himself appropriately. The respondent states, "It is unclear from the papers available what exactly was before the Judge or that it would have made a material difference to the outcome of the appeal." At the hearing before me, Mr Tarlow adopted the Rule 24 response. He was able to confirm that there had been an exchange of emails on 30<sup>th</sup> January 2014 that resulted in the appellant providing the respondent with an up to date address, but he could not identify the address to which any correspondence sent to the appellant on 31<sup>st</sup> January 2014, was sent.

## **DISCUSSION**

15. In a short determination the Judge noted at paragraph [8] that the Notice of Hearing sent to the appellants representative drew a bundle dated 5<sup>th</sup> January 2015. Having looked at the fax received from the appellants representatives dated 5<sup>th</sup> May 2015, I am satisfied that the Judge is in fact referring to the bundle received by the Tribunal by fax on 5<sup>th</sup> May 2015. The observation by the Judge that the representatives state that they have instructions from the appellant requesting the appeal be considered on the papers is consistent with what is set out in the covering letter faxed to the Tribunal on 5<sup>th</sup> May 2015. The bundle relied upon by the appellant was therefore before the Judge when he made his decision.
16. It seems to me that most of the documents that were sent to the Tribunal under cover of the letter dated 5<sup>th</sup> May 2015 were irrelevant to the issues before the First-tier Tribunal and related to the previous claim for Judicial Review. However there was within that bundle, a statement from the appellant signed on 5<sup>th</sup> May 2015. The Judge states at paragraph [11] that the appellant submitted no bundle and there is no

reference to the witness statement of the appellant having been considered by the Judge, in reaching his decision.

17. In my judgment the decision of the Judge discloses material error of law. The Judge failed to show any engagement with the evidence of the appellant as set out in her witness statement. Whilst it has been suggested that it was unclear what documents or evidence the Judge had before him, this is by reference to the decision. I am satisfied that the bundle of documents sent by fax to the Tribunal on 5<sup>th</sup> May 2015 was available in the Tribunal file. I can find no evidence to show that the judge engaged with the evidence of the appellant or otherwise conducted any independent assessment of the material relevant to the appeal.

### **ERROR OF LAW DECISION**

18. I find a material error of law in the decision of the First-tier Tribunal which shall be set aside.
19. I note that the Upper Tribunal in accordance with Part 3 of the Practice Statement for the Immigration and Asylum Chamber of the Upper Tribunal is in terms of disposal of appeals, likely on each occasion to proceed to remake the decision, instead of remitting the case to the First Tier Tribunal unless the Upper Tribunal is satisfied that the effect of the error of the First Tier Tribunal Judge has been to deprive a party before the First Tribunal of a fair hearing or other opportunity for that parties case to be put to, and considered by the First Tier Tribunal.
20. In my view the most fair and proportionate way in which to deal with this case and given the nature of the factual findings to be made, is to remit the matter for a de novo hearing in the First-tier Tribunal.

### **Notice of Decision**

21. The appeal is allowed. The decision of the First-tier Tribunal promulgated on 1<sup>st</sup> July 2015 is set aside and I remit the matter for a de novo hearing in the First-tier Tribunal.

22. No anonymity direction is applied for and none is made.

Signed

Date

Deputy Upper Tribunal Judge Mandalia

**FEE AWARD**

23. The First-tier Tribunal made no fee award, and whether or not a fee award is appropriate, is again a matter for the First-tier Tribunal in due course.

Signed

Date

Deputy Upper Tribunal Judge Mandalia