



IAC-FH-NL-V1

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

Appeal Number: IA/06819/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 December 2015**

**Decision & Reasons Promulgated  
On 28 January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE O'RYAN**

**Between**

**MR RANA PARBATBHAI GORANIYA  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Iqbal, Counsel instructed by Ydvisas  
(Globevisas.com)

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

**DECISION AND REASONS**

1. This is an appeal brought by Mr Rana Goraniya against a decision of the First-tier Tribunal, Judge Wallace dated 23 June 2015 in which the judge dismissed the Appellant's appeal against the Respondent's decision of 2 February 2015 refusing to vary his leave and issuing a removal decision under Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The history of this matter is that the Appellant is a national of India who first came to the United Kingdom with leave to enter as a student. Entry clearance was granted to him on 2 December 2010 as a Tier 4 Student valid until 24 June 2012. Prior to the expiry of that leave to remain he made an application for further leave to remain which was granted as a Tier 4 Student valid until 13 April 2014.
3. On 10 April 2013 the Appellant's leave to remain was curtailed by the Secretary of State to expire on 9 June 2013 because on 18 March 2013 the Respondent received notification from the Appellant's Sponsor, London State College, that they had stopped sponsoring the Appellant due to non-attendance. It is to be noted that on that occasion the curtailment provided the Appellant with 60 days in which he had the opportunity of making a further application for leave to remain with a new Certificate of Acceptance for Studies letter if he so wished. He did make a further application for leave to remain as a Tier 4 Student at a different college, being the Academy de London and he was on 30 August 2013 granted further leave to remain valid until 18 April 2015.
4. On 5 December 2013 the Appellant's leave to remain was again curtailed to expire on 3 February 2014 - again 60 days later - because on 1 November 2013 the Tier 4 (Sponsor) licence for the Academy de London was revoked.
5. On 3 February 2014 i.e. the same day on which his current leave was due to expire, the Appellant applied for leave to remain as a Tier 4 Student to study at the London College of Business Management and Information Technology to study a course from 5 February 2014 to 4 December 2015.
6. I pause there to reflect that at paragraph 10 of the judge's decision he appears to suggest that the Appellant was outside his leave to remain in the United Kingdom at the time that he made his most recent application. If that is what the judge intended to find I cannot agree with him. The Secretary of State's decision letter of 2 February 2015 records that the Appellant's most recent application was made on 3 February 2014 i.e. the same date on which his last period of leave to remain was due to expire. It seems to me therefore that the last application the Appellant made for further leave to remain was made in time.
7. That application was not considered immediately by the Secretary of State but instead a decision was made upon it almost a year later on 2 February 2015. The application for further leave to remain was refused resulting in the decision now appealed against. The basis for that refusal was that when the Tier 4 Sponsor Register was checked on 2 February 2015 it was discovered that the London College of Business Management and Information Technology was not listed on that register. The Respondent therefore formed the view that the CAS letter which the Appellant had been issued in relation to that course of study was no longer valid and declined to award 30 points under the Tier 4 scheme.

8. The Appellant appealed against that decision requesting only a paper appeal. The Appellant was represented in preparing for that appeal, and a skeleton argument was prepared by Ms Iqbal, who appears before me today. The skeleton argument is undated, but was clearly before the First-tier Judge. In that skeleton argument Ms Iqbal refers to the existence of the modernised guidance for Tier 4, Version 27, valid from 6 November 2014 and she quoted from it:

“If the Tier 4 Sponsor’s licence expires, is revoked or surrendered whilst an applicant had an application under consideration in the Home Office then *(there are then set out a number of scenarios, including the following)*

- If their permission to stay runs out whilst they are waiting for a decision on their application you must delay the refusal of their application for 60 days to allow them to get a new CAS from a different Sponsor adjourned vary their application for leave in the UK.

...

In all cases you must write to the applicant to tell them the date by which they must provide a new CAS. ...”

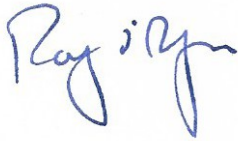
9. A copy of the relevant Tier 4 guidance was also included in the bundle of papers prepared and submitted to the Tribunal ahead of the paper appeal. That appeal was considered by the judge on the papers in Glasgow on 10 June 2015. The judge formed the view that the simple fact that the Appellant did not have a valid CAS letter at the date that the Respondent considered his application for further leave to remain resulted in the Respondent being correct not to award any points under the relevant Appendix of the Immigration Rules. There is no reference within the judge’s decision to the existence of the Tier 4 guidance which had been brought to his attention or that any skeleton argument had been submitted in support of the appeal.
10. The Appellant then appealed to the Upper Tribunal on grounds again quoting from the Tier 4 guidance arguing that the correct course of action for the judge to have followed would have been to have found that the decision of the Secretary of State was not made in accordance with the law, on the basis that a relevant published policy had not been complied with by the Secretary of State.
11. Having discussed all these matters with both Advocates before me it seems there is agreement between the parties that the First-tier Judge did err in law in the manner in which he approached this appeal. It is clear to me that the Respondent’s non-compliance with her own published policy results in the Respondent having proceeded not in accordance with the law; a ground of appeal under s.84(1)(e) Nationality, Immigration and Asylum Act 2002 (‘NIAA 2002’), still available to the Appellant in the present case due to the date of decision. What the Respondent should have done was to have granted the applicant 60 days’ grace in which to

make a further application for leave to remain with a further CAS letter, if he so wished. The judge ought to have allowed the appeal under s.86(3) (a) NIAA 2002 on the basis that the Respondent's decision was made not in accordance with the law and therefore the judge's decision contains a material error of law.

**Decision**

12. The decision of the First tier involved the making of a material error of law.
13. I set aside the judge's decision and I re-make the decision ruling that the Appellant's appeal is to be allowed on the basis that the Respondent's decision was made not in accordance with the law.
14. The result accordingly is that the Appellant's application for further leave to remain dated 3 February 2014 remains extant before the Respondent, for a lawful decision to be made upon it.

Signed:



Deputy Upper Tribunal Judge O'Ryan

Date: 27.1.16