



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/27715/2014**

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 26th January 2016

Promulgated

On 4th February 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

M K P

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Makol, counsel

For the Respondent: Ms Brocklesby-Weller, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant pursues this appeal against the decision of First-tier Tribunal Judge James ("the FTTJ") to refuse his appeal against the respondent's decision to refuse to vary his leave to remain in the UK as a Tier 4 (General) Student Migrant and to remove him from the UK by way of directions under s47 of the Immigration Asylum and Nationality Act 2006.
2. No anonymity direction was made in the First-tier Tribunal. However, given the erroneous findings of the First-tier Tribunal that the appellant had used deception in support of his application, he is entitled to anonymity in these proceedings.
3. The appellant is a citizen of India. The respondent refused his application on the ground that his CAS had been withdrawn, he did not have evidence

of passing an approved English language test to the required standard and he had submitted an education certificate from the University of Bedfordshire which had been confirmed as false by the issuing authority. The respondent considered that the appellant had used deception in his application and his application was refused under paragraph 322(1A) of the Immigration Rules.

4. Permission to appeal was granted by FTTJ Grant-Hutchison on 19 November 2015 in the following terms:

“It is an arguable error of law that the Judge misdirected himself to the burden of proof and what evidence was to be considered in finding that the Appellant had committed deception in his application by making findings on the B2 certificate when the Document Verification Report refers to Bedford University documents which arguably could have affected the withdrawal of the CAS.”

5. Thus the appeal has come before me.
6. For the appellant, Mr Makol submitted that the Document Verification Report (DVR) makes it clear that the appellant had been a student at the University of Bedfordshire. Thus the DVR did not support a finding of deception. Furthermore, contrary to paragraph 6 of the decision, the burden of proving deception was with the respondent.
7. Ms Brocklesby-Weller, for the respondent, accepted that the decision contained an error of law with regard to the finding of deception. She submitted however that the findings with regard to the withdrawal of the CAS were well made. Irrespective of how the withdrawal occurred, the appellant was unable to demonstrate he fulfilled the criteria in the points based scheme such that he was entitled to the award of points for a CAS. She relied on the guidance in both **Kaur v SSHD [2105] EWCA Civ 13** and **EK (Ivory Coast) v SSHD [2014] EWCA Civ 1517**. In the latter case, a CAS had been issued and withdrawn before the date of decision, as a result of an administrative error (paragraph 18) and this was accepted by the respondent. Thus the circumstances were similar to this appeal where the appellant states that the CAS had been assigned to another student. Whether as a result of the appellant’s own actions or not, an administrative error had caused the withdrawal. Ms Brocklesby-Weller relied on paragraph 25 in particular to the effect that the respondent was not responsible for the general unfairness which the appellant had suffered as a result of the educational establishment’s error; the respondent’s decision was not unlawful. There was no obligation on the respondent to adjourn her decision to give the applicant notice of the problem and an opportunity to rectify it. This approach was endorsed in **Kaur** (paragraph 41). The points based scheme is prescriptive (paragraph 41).

Discussion and Findings

8. Ms Brocklesby-Weller’s concession on the issue of deception is well made: the FTTJ applied the wrong burden of proof and his finding of deception is perverse and irrational given the content of the DVR which appends an

email from the University of Bedfordshire to the effect that the appellant did study there and that the transcript is “a genuine interim transcript and the Challenge Certificate is genuine as well.” This statement is qualified by the author who goes on to state “However, it is not the student’s award certificate. He did not pass his final project so he will only qualify for a PG Cert.” Thus the two documents to which the author refers are genuine. There is no evidence to suggest that the appellant submitted either of these documents as being other than what they are. Particularly there is no evidence to suggest that they were submitted as if they were award certificates.

9. I do not agree with the grounds of appeal that the FTTJ has conflated the issue of deception in relation not only to the University of Bedfordshire documents but also the English language certificate. It is clear from the decision that the FTTJ did not find the appellant a credible witness and did not accept his explanation that he had sent an English language certificate to the respondent prior to the date of decision. He gave his reasons for this. This was a finding he was entitled to reach on the basis of the oral evidence which he cites. There is no error of law in relation to this finding.
10. However, for the reasons given, the FTTJ’s finding that the appellant had used deception in submitting a false document is wholly unsustainable on the evidence, not least because the burden of proving deception is with the respondent (not the appellant, as stated by the FTTJ).
11. I turn to the CAS Certificate. It is not in dispute that it had been withdrawn by the date of decision. The appellant says in his witness statement that this was due to the college being unable to complete the procedure with regard to his CAS. The appellant was told by the college that there was nothing they could do to rectify this; they had used their CAS allocation. Thus the appellant’s evidence is by way of mitigation. The FTTJ found as a fact that the appellant, as a result of injury, he was unable to complete his course. The FTTJ found, on this evidence, that although the CAS was said to have been withdrawn, the appellant would not have qualified for a CAS in any event having failed to achieve the necessary qualifications for entry on the proposed course. This finding is sustainable on the evidence. Even if that were not the case, the appellant would not have been awarded points, his CAS having been withdrawn. There was no obligation on the respondent to notify him of that or to give him an opportunity to rectify the situation (**EK (Ivory Coast)** and **Kaur**).
12. Both parties agreed that if I found a material error of law, I should remake the decision. Given my findings above, the decision to dismiss the appeal against the refusal under paragraph 322(1A) must be set aside. However, the decision to dismiss the appeal under the Points Based Scheme contains no error of law and stands. The appellant has not appealed against the dismissal of his appeal on human rights grounds and that also stands.

Decision

13. The making of the decision of the First-tier Tribunal did involve the making of a material error on a point of law.

14. The FTTJ's decision to dismiss the appeal under paragraph 322(1A) of the Immigration Rules is set aside. I remake the decision and allow it under that paragraph.
15. The FTTJ's decision to dismiss the appeal under the Points Based Scheme in the Immigration Rules and on human rights grounds does not contain an error of law and I do not set it aside. It is confirmed.

Signed **A M Black**
2016

Date 1 February

Deputy Upper Tribunal Judge A M Black

Direction Regarding Anonymity - Rule 14, Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed **A M Black**

Date 1 February 2016

Deputy Upper Tribunal Judge A M Black