



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

Appeal Number: IA/34668/2014
IA/34672/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 12 February 2016**

**Decision & Reasons Promulgated
On 18 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

**MS KALAIVANI SIVAKUMAR
MR JAYARAM SIVAKUMAR
(NO ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Ms A Fijiwala, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the decision, promulgated on 9 July 2015, of First-tier Tribunal Judge Haria (hereinafter referred to as the FTTJ).

Background

2. The first appellant applied for further leave to remain as a Tier 4 (General) student on 6 March 2014 in order to follow a NQF level 7

Diploma in Healthcare Management at the European College for Higher Education. The second appellant applied for leave to remain, dependent upon the first appellant's claim. Their applications were refused on 16 June 2014 as the Secretary of State learned that the Confirmation of Acceptance for Studies (CAS) previously issued to the first appellant had been withdrawn. Consequently no points were awarded for a CAS or for maintenance.

3. In the grounds of appeal, it was argued that Secretary of State should have contacted the first appellant when the CAS was withdrawn in order to enable her to provide another one. Reference was made to a common law duty of fairness and the decision not being in accordance with the law. A passing reference was also made to Article 8 ECHR.
4. At the hearing before the FTTJ, the appellants did not appear despite having initially requested an oral hearing. A representative attended the hearing on their behalves but requested that the appeals be dealt with on the papers. A skeleton argument stated that the reason the first appellant's CAS was withdrawn was because the Secretary of State had removed the Tier 4 sponsor's licence. Accordingly, it was argued that further leave to remain of 60 days should have been granted to enable the first appellant to switch to a different sponsor.
5. The first appellant's witness statement disputed that her CAS was withdrawn and said that it was more likely that the college provider had been removed from the register. The FTTJ did not accept that the first appellant's case was on all fours with the scenario in Patel (revocation of sponsor licence - fairness) India [2011] UKUT 00211 (IAC) owing to a lack of evidence that there had been any change in the status of the sponsor. The FTTJ was guided by EK (Ivory Coast) v SSHD [2014] EWCA Civ 1517 and concluded that the first appellant had not been treated unfairly. With regard to Article 8, the FTTJ noted that this had not been pursued with any vigour on the evidence before her and she dismissed this claim on the basis that their private lives were outweighed by the legitimate public interest.
6. The grounds of application argue, that the FTTJ erred in expecting the appellant to provide evidence as to why the CAS was withdrawn rather than asking if the Secretary of State had suspended or revoked the sponsor's licence. It was asserted that; "*colleges in this stage are usually closed.*" The appellant's case was distinguished from the claimant in EK on the basis that she did not know why the college stated that the sponsorship was withdrawn and "*the fact*" the college is closed could be indicative that the licence was revoked or suspended.
7. Upper Tribunal Judge Roberts granted permission on all grounds, commenting "*There appears to be a question over whether the first Appellant should have been afforded the opportunity to enroll on another course.*"

8. The Secretary of State lodged a Rule 24 response on 4 January 2016. In opposing the appeal, the respondent stated that at the time of the refusal letter, the college in question was "*licensed and active.*"

Error of law

9. At the hearing before me, there was no attendance by or on behalf of the appellants. At approximately 1050 hours, my clerk handed me a letter, sent by facsimile at 1944 hours on 11 February 2016. The said letter, from Maalik & Co Solicitors & Advocates, advised the Tribunal that the appellants had instructed them not to attend and that they wished to have their appeals decided by way of the papers submitted in the initial appeal and grounds for "reconsideration. "
10. I had regard to the following paragraph of the Tribunal Procedure (Upper Tribunal) Rules 2008 in deciding whether to accede to the appellant's request.

'Decision with or without a hearing

34. (1) Subject to [paragraphs (2) and (3)], the Upper Tribunal may make any decision without a hearing.

(2) The Upper Tribunal must have regard to any view expressed by a party when deciding whether to hold a hearing to consider any matter, and the form of any such hearing.'

11. I have had regard to the appellants' desire to have their appeals considered on the papers but I decide to proceed to reach a decision after a hearing given the very late notice from those representing the appellants and I also wished to have the benefit of Ms Fijiwala's submissions.
12. I firstly considered the remainder of the contents of the letter of 11 February 2012, a copy of which was provided to Ms Fijiwala. In essence, this letter argued, "*that there was only point to make.*" That point was far from clear and appeared to relate to the withdrawal of the CAS going against "*basic fairness.*" There were also references to a period of 28 days being insufficient to meet the requirements of the Rules for a new application to be made.
13. Maalik & Co's letter emphasised that the first appellant had only found out that the CAS was withdrawn at the time of the refusal; the college had closed down and therefore the appellant could not enquire as to why her CAS was withdrawn. It was maintained that the appellant should be granted a further 60 days leave to remain.
14. Ms Fijiwala urged me not to consider the point raised in the letter regarding the 28 day period for a fresh application to be made, because this had not been raised in the grounds of appeal and permission was not granted on this basis. Permission to appeal had been granted only in relation to the withdrawal of the CAS and whether the college in question

had had its licence revoked.

15. Ms Fijiwala argued that there were no errors in the decision. The FTTJ had rightly considered EK and had recorded the appellants' case that the 60 days should apply. The FTTJ had recorded at [35] and [36] of the decision that there was no evidence from the appellants as to the change of status of the sponsor. Thereafter, she referred me to documents enclosed in the respondent's bundle of evidence, which was before the FTTJ, in order to support the Secretary of State's contention that the college in question was licensed and fully active as at the date of the check. The grounds were misconceived in stating that the appellants were not aware of this.
16. Ms Fijiwala drew my attention to the judgment in Kaur v SSHD [2015] EWCA Civ 13, which approved EK and submitted that the Secretary of State had no obligation to notify the first appellant that the CAS had been withdrawn or give her time to obtain a new sponsor. The onus was on the appellant to show that she met the requirements of the Rules. The issue of fairness raised in the grounds and the letter of 11 February 2016 was also addressed in Kaur.

Decision on Error of Law

17. This was a detailed, carefully crafted decision where the FTTJ forensically examined the evidence before her as well as the arguments put forward on the appellants' behalves.
18. Permission to appeal was granted on the basis of whether the first appellant ought to have been afforded the opportunity to enroll on another course. The appellant maintains that the sponsor in question had its licence revoked or suspended.
19. Contained in the respondent's evidence, at annexe G was a document headed "*CAS check - migrant search results.*" This document shows that the CAS was withdrawn when the Home Office caseworker conducted this check. Furthermore, at the date of this check the licence of the sponsoring college was stated as being "*Licensed and Fully Active.*" The appellants have chosen not to engage with this evidence which I find shows that the reason for the withdrawal of the CAS was unlikely to have had anything to do with the status of the sponsor's licence. Furthermore the FTTJ noted at [34] of the decision that the appellants had yet to provide any evidence that the college in question ever lost its licence.
20. The appellants argue that it was unfair that their applications were refused without warning or being given the opportunity to make another application. The FTTJ considered this issue in detail at [42], with reference to EK and she correctly assessed the position; concluding that there was no such unfairness. Indeed, in Kaur, the following is said, also at [42];

"It follows, in my judgment, that both Rahman and EK (Ivory Coast) are binding authority on the question whether the Secretary of State should, as a matter of fairness, give notice to an applicant for leave to remain or the

Tier 4 sponsor that she considers there to be a deficiency in the CAS before making an adverse decision on that basis. There is no such obligation. “

21. Accordingly, the FTTJ was correct to find that the first appellant had not met the requirements of paragraph 245ZX and to dismiss both appeals under the Immigration Rules.
22. There is no material error of law in the FTTJ’s decision

Conclusions

- (1) The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
- (2) I uphold the decision of the FTTJ.

Signed:

Date: 14 February 2016

Deputy Upper Tribunal Judge Kamara