



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/50024/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 25 February 2016**

**Determination Promulgated
On 16 May 2016**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**RAJA WAJAHAT
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Tarlow, Senior Home Office Presenting Officer
For the Respondent: Mr Skinner, Counsel instructed by ATM Law Solicitors

DETERMINATION AND REASONS

1. The Respondent is a national of Pakistan born 20th March 1993. On the 27th August 2015 the First-tier Tribunal (Judge Oakley) allowed his appeal against a decision to refuse to vary his leave to remain and to remove him from the United Kingdom pursuant to s47 of the Immigration Asylum and Nationality Act 2006¹. The Secretary of State now has permission to appeal against that decision².
2. The matter in issue in the appeal before the First-tier Tribunal was whether the Secretary of State had acted fairly, or in accordance with published policy in respect of Tier 4 (General) Student Migrants who

¹ Decision dated the 27th August 2015

² Permission granted by First-tier Tribunal Judge Saffer on the 19th January 2016

failed to qualify under the Rules for further leave because, for instance, their Tier 4 Sponsor colleges had had their licences revoked. The Respondent asserted that the particular circumstances of his case were such that his position was analogous to that of the students in Patel (revocation of sponsor licence – fairness) India [2011] UKUT 00211 (IAC) and that he should therefore be given '60 days grace' in order to obtain a valid CAS.

3. Before the First-tier Tribunal the Respondent set out the following chronology. He was a Tier 4 Migrant at the Kent College of Business and Computing when in September 2014 he was informed that the Secretary of State had withdrawn the licence of this college. He was given 60 days to obtain a new CAS from a new college. The Respondent, and the Secretary of State, were informed by Kent College of Business and Computing that the students affected by the revocation were to be transferred *en masse* to a new Tier 4 Sponsor, known as Vernon Community College. The Respondent was happy with this arrangement. He paid his fees to Vernon Community College and duly waited for his CAS to be issued. Shortly before his leave was due to expire he was informed that the licence of Vernon Community College had also been revoked. The Respondent contacted the Home Office and requested a further 60 days in order to get a new CAS from a third college.

4. Of these circumstances the determination says the following:

“..it was clear from the Grounds of Appeal that the Appellant had, on the 15th November 2014, made an application within the 60 day period that had been allowed to him (the varied application) by completing an application form sent to the Respondent within 60 days and paying another application fee and covering letter which stated to the Respondent that Kent College for Business and Computing had arranged for existing students to be transferred to another college namely the Vernon Community.

The Appellant had paid a further fee to Vernon Community but that college also had its licence revoked by the Respondent.

Notwithstanding that position, the Respondent had not given the Appellant any further 60 day period to find a Sponsor who had a valid licence.

I indicated to the Respondent's representative that it would appear clear that the Appellant was entitled to a further 60 day period...”

It was on this basis that the appeal was allowed.

5. The Secretary of State now complains that the First-tier Tribunal misunderstood the position. This was not a 'Patel case' where the applicant had been unfairly prejudiced by a college having its licence withdrawn after the application and CAS had been submitted. Here the application had not been supported by a CAS at all. In those circumstances the Respondent was not entitled to a further 60 day grace period under the Secretary of State's published policy.

My Findings

6. Having heard the submissions of both parties, and having had regard to the material before the First-tier Tribunal I am satisfied that the determination contains no material error of law. The Secretary of State is correct to say that this was not on all fours with Patel. It is however apparent from the papers before me that the Respondent did not assert that to be the case. He did not rely on the policy specifically pertaining to persons whose Tier 4 Sponsors are removed from the register after issuance of a valid CAS. His situation was more nuanced, but analogous. His predicament arose from the successive revocation of not one but two college licenses. It was his case that notwithstanding the absence of a CAS from Vernon Community College he had been treated unfairly since he had not been given an opportunity to remedy an application rendered ineffective by matters beyond his control.
7. I am satisfied that this was the case understood by the First-tier Tribunal, and that the appeal was allowed on that basis. The Secretary of State did not seek to persuade me that this was an impermissible extension of the Patel principle, nor that this approach contradicted the dicta of McCloskey J in that case: see also Thakur (PBS decision - common law fairness) Bangladesh [2011] UKUT 00151 (IAC). The First-tier Tribunal understood the Respondent to have been prejudiced by matters beyond his control and allowed the appeal to the limited extent that the decision was not in accordance with the law, for which read principles of common law fairness. I find no arguable error of law in that decision.

Decisions

8. The decision of the First-tier Tribunal contains no error of law and it is upheld.
9. I was not asked to make an order for anonymity and on the facts I see no reason to do so.

Upper Tribunal Judge Bruce
29th February

2016