



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

Appeal Numbers: IA106652015
IA106692015
IA106762015

THE IMMIGRATION ACTS

**Heard at Field House
On 19 June 2017
Prepared 19 June 2017**

**Decision & Reasons Promulgated
On 11 August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MRS ASHABAHEN [P]
MR MAYURKUMAR [P]
[F P]
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: None

For the Respondent: Mr N Bramble, Senior Presenting Officer

DECISION AND REASONS

1. The first Appellant, a national of India, appealed against the Secretary of State's decision, dated 18 February 2015, to dismiss an application made on 28 May 2014 for leave to remain as a Tier 4 (General) Student. The

second and third Appellants are husband and daughter of the first Appellant (1 June 1980, [] 2013). Their appeals against the Secretary of State's decision came before First-tier Tribunal Judge Rowlands (the Judge), who on 29 September 2016 dismissed the appeals on immigration grounds. Permission to appeal those decisions was given First-tier Tribunal Judge Brunnen on 30 April 2017. The Respondent's Rule 24 response was made on 19 May 2017. In granting permission Judge Brunnen had in mind what had become a somewhat confused position over two aspects, first the withdrawal of a certificate of sponsorship letter (CAS letter) in respect of the first Appellant and secondly the suspension of the college (Newcastle Academy of Business & Technology) status as a trusted Sponsor ultimately being revoked as of 16 December 2014.

2. It is clear that before the Judge the evidence was there to indicate that the CAS letter had been issued on or with effect from 14 July 2014 but ultimately withdrawn on 25 September 2014. There was therefore, at the date of the Respondent's decision on 18 February 2015, no CAS letter in existence irrespective of the issue of the revocation of the college's sponsorship licence.
3. The position was, although this was not a case, even if the Appellant was in regular contact with the college, that the withdrawal of the CAS letter was not a matter caused by the Secretary of State. It did not attract, as sometimes became the case, additional time (60 days) for applicants to apply from a different college as a result of the suspension or withdrawal of the sponsorship licence.
4. It is clear on the evidence that irrespective of the status of the college there was no valid CAS letter in being as at the date of decision.
5. The Appellant did not appear before the Judge and, whilst the front page of the decision suggests they are present, the Judge unequivocally states at

paragraph 2 of the decision none of the three Appellants attended the hearing. The first Appellant

“... had requested that the proceedings be adjourned as she was due to give birth in October 2016. Her application was refused as there was no medical evidence to suggest she was unfit to attend the hearing. I proceeded in their absence. The Respondent’s representative did not wish to add to the refusal notice”.

6. In a letter sent to the Ft Tribunal, dated 16 June 2016, the first Appellant indicated that she was not able to afford legal representation to attend and she asked that the case be dealt with on the papers without her “oral attendance”.
7. In this matter there has been some discussion as to whether or not Article 8 ECHR was raised by the Appellant at the outset against the Secretary of State’s decision. Given that the Appellant was claiming in effect to be in the United Kingdom for the purposes of studies it is difficult to see on what basis Article 8 would have been engaged to show that an adverse decision was disproportionate. Be that as it may, on a careful scrutiny of the papers the first appearance of reference to Article 8 ECHR is in fact in paragraph 8 of the grounds seeking permission. It is said that the Appellant had raised these grounds before and within her witness statement. Having carefully considered the witness statement of 6 March 2015, which was before the Judge, it is fair to say that there is no reference whatsoever to Article 8 ECHR.
8. Accompanying the papers for the purposes of the hearing was a further witness statement of the Appellant which must be misdated because it refers to the Secretary of State’s Rule 24 response which was not made until 19 May 2017 but the additional statement is dated 18 March 2016.

9. Attached to the same statement is a copy of the Secretary of State's May 2017 Rule 24 response.
10. Additionally provided but it is undated is a copy of a document which is said to have been submitted at some point or another but which ultimately does not in reality disclose an Article 8 ECHR issue. It appears to be proforma grounds used to make a general claim of a breach of the ECHR. The fact is that there was no evidence advanced by way of statement on behalf of any of the Appellants concerning Article 8 issues nor the impact on their family/private life rights by the Respondent's decision nor by removal with reference to Section 47 of the Immigration, Asylum and Nationality Act 2006.
11. I am therefore not satisfied that there was ever a ground on which permission should be given in relation to Article 8 grounds and, as the person granting permission noted, there was no reference whatsoever in the Judge's decision to an Article 8 ECHR claim. It seems to me that is wholly explicable by the fact that there was none articulated at the outset or before Judge Rowlands when she considered the appeals.
12. In these circumstances therefore I am not persuaded that there has been any material error of law by the Judge in the consideration of the merits of the appeal. The sad fact is that if there is a dispute as to the justification for the withdrawal of the CAS letter then that must lie between the first Appellant and the college. I do not see how the withdrawal of the CAS letter is a fault of the Respondent. Further I have considered paragraph 7 of the Appellant's statement dated 6 March 2015. No admission has been made by the Home Office that the college was bullied into withdrawal of the CAS letter. There is nothing from the college in writing confirming that to be the case. In these circumstances I do not see that the Judge can be criticised when she received the statement of 6 March 2015 on the basis of the evidence which was then presented.

13. The additional bundle provided for this Tribunal does not enlarge upon that claim or demonstrate any acceptance by the college that they were bullied by the Home Office, for unspecified reasons, into the withdrawal of the CAS letter in September 2014.

14. The Original Tribunal's decision discloses no material error of law.

15. The Original Tribunal's decision stands.

NOTICE OF DECISION

The appeal is dismissed.

ANONYMITY ORDER

No anonymity order was sought nor is one required.

Signed

Date 10 August 2017

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

The appeal has failed. Therefore there is no fee award.

Signed

Date 10 August 2017

Deputy Upper Tribunal Judge Davey