



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: IA/00113/2016

**THE IMMIGRATION ACT**

Heard at Field House

Decision & Reasons Promulgated

On 13<sup>th</sup> June 2018

On 19<sup>th</sup> June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

H M Rubel

(NO ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Bhuijan of Chancery Solicitors

For the Respondent : Mr Tarlow Senior Home Officer Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Ian Howard promulgated on the 27<sup>th</sup> May 2017 whereby the judge dismissed the appellant's appeal against the decision of the respondent. The decision of the respondent was to refuse the appellant's application for further leave to remain in the United Kingdom as a Tier 4 General Student Migrant.
2. I have considered whether or not it is appropriate to make an anonymity direction. Taking all of the circumstances into account I do not consider it necessary to make an anonymity direction.

3. Leave to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge P J M Hollingworth on 29<sup>th</sup> April 2018. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.
4. On 30 November 2013 the appellant made application for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant. The application was refused on 10 June 2014 with a right of appeal. The application was refused because the appellant did not have a valid CAS at the time of the application relating to the college that he had identified as the sponsoring college. The full circumstances in which the appellant came not to have a valid CAS are set out in a decision by First-tier Tribunal Judge Boyes, paragraph 3 to 5.
5. The appellant appealed against the decision and the appeal was allowed by Judge Boyes to the extent that the application was remitted back to the respondent for the respondent to make a new decision.
6. The decision to remit the application back to the respondent gave the appellant 60 days in which to obtain a valid CAS. The appellant had until 16 October 2015 to obtain a new sponsoring college and a valid CAS. Given the circumstances outlined in the decision by Judge Boyes is difficult to understand why the appellant could not submit a valid CAS.
7. The appellant failed to find a new sponsoring college and failed to obtain a valid CAS. On 21 December 2015 his application was again refused. By the date of that refusal, a further 60 days on from the cut off point for obtaining a valid CAS, the appellant had still not obtained a sponsoring college or a valid CAS.
8. The matter was listed for hearing. The appellant had not submitted the name of a new sponsoring college or a valid CAS by the time of the hearing. The case was to be dealt with on 29 March 2017, 3 ½ years after the original application.
9. On the day of the hearing a letter was received from Chancery Solicitors dated the 28 March 2017 indicating that they were unable to take instructions from the appellant due to illness and he had been unable to attend their offices to give them instructions because of his illness. No medical evidence had been submitted to substantiate the claim that the appellant was ill.
10. As noted by the judge there was a letter of authority, which authorised the solicitors to seek documents on behalf of the appellant in pursuance of his appeal.
11. In order to substantiate that the appellant was unfit to attend the hearing a medical note confirming the same needed to be lodged with the Tribunal. No medical note was lodged then nor has any medical note been lodged since. No medical note has been lodged to indicate why in a period from October 2015 through to March 2017 the appellant has been unable to obtain a CAS. No evidence has been lodged to show that the appellant has sought to obtain a valid CAS.
12. It was submitted by the appellant's representatives that consistent with the case of Nwaigwe (adjournment – fairness) [2014] UKUT 00418 (IAC) the case should have been adjourned as the case could not be fairly determined. The appellant's representative's

letter states that they understood that the appellant was ill and they had been unable to obtain medical evidence in the short time available.

13. The notice of hearing had been sent out in September 2016. The case was listed for hearing 6 months later in March 2017. There was ample time to get the evidence together and submit it to the tribunal before any hearing. Even if the appellant did not have legal representatives, he could still have sought to obtain a valid CAS. The issue simply was did the appellant have a valid CAS. None had been submitted to the Tribunal. The appellant had had more than enough time in order to get a CAS.
14. The appellant's representative indicated that they had been instructed the day before the hearing in March and because of that they had been unable to take instructions. They understood from appellant that the appellant was suffering from a cold or flu or perhaps some blood pressure issue. No medical evidence has been submitted to substantiate that. The only evidence is clearly the word of the appellant to his representatives.
15. Given the circumstances the appellant still did not have a valid CAS, the appellant could not succeed in his application under the immigration rules.
16. It is suggested that as part of the grounds of appeal the appellant has raised article 8. However the appellant had submitted no evidence to show that he had any material family or private life in the United Kingdom. There was no evidence that he had a wife or any children. There was no evidence that he had a career, social commitments, commitments to cultural organisations in his local area, property, assets or other connections to life in the United Kingdom. The appellant has produced no evidence to show that he had any significant aspect of private life in the UK.
17. The appellant's representative sought to argue that the judge had failed to consider article 8 and that that failure was a material error of law. In that respect I draw attention to the case of *Sarkar v SSHD* 2014 EWCA Civ 195, in which the Court of Appeal ruled that even if the matter was raised in the notice of appeal, the Tribunal was entitled, if no evidence to substantiate an Article 8 family or private life had been submitted, to treat it as though the Article 8 claim had been abandoned.
18. The only aspect of private life that the appellant has sought to raise relates to his course of study and education. The Immigration Rules are the response of the government to the obligations under Article 8 and give means by which individuals can seek leave to remain in the United Kingdom.
19. Reliance has been placed upon CDS (PBS: "available" : Article 8) Brazil 2010 UKUT 00305. And cites the following paragraph:-

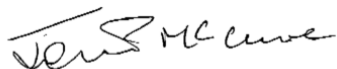
*Article 8 does not give an Immigration Judge a freestanding liberty to depart from the Immigration Rules, and it is unlikely that a person will be able to show on Article 8 right by coming to the UK for temporary purposes. But a person who is admitted to follow a course that has not yet ended may build up a private life that deserves respect, and the public interest in removal before the end of the course may be reduced where there are ample financial resources available.*
20. An examination of the previous decision by Judge Boyes discloses that the appellant was to commence on a course of study of NQF Level 6 in Management or in

management and leadership at one or other college. It does not indicate a continuing course of study or completion of an existing course of study. In any event the appellant has had for years in which to effectively complete his course of study and/or obtain a valid CAS and he has not done so.

21. In the present circumstances where the appellant had adduced no evidence to substantiate any aspect of private or family life under Article 8, the judge was entitled to treat the claim as abandoned and to determine the matter on the basis that the appellant was only pursuing his application under the Immigration Rules as a Tier 4 student. Even if the judge should have considered the matter under Article 8, the appellant had come for a temporary purpose and it was evident that he was not seeking to continue a course of study as he has not been studying for the last 4 years. Consistent with CDS a person that comes for a temporary purpose does not have a right to study here and to continuing study at on different courses.
22. In the circumstances the judge was entitled on the basis of the information available to proceed with the hearing in the absence of the appellant. The appellant could not meet the requirements of the rules and the judge was entitled therefore to dismiss the application under the rules. The judge was entitled thereafter as no evidence had been adduced to treat the Article 8 claim as abandoned and there was no necessity for him to make of finding in respect thereof.
23. Given that there was no medical evidence before the judge to indicate that the appellant was medically unfit and given that no medical evidence has been submitted, the judge was entitled to look at the evidence and entitled to conclude that the appeal could be decided on the basis of the evidence lodged.
24. In the light of the matters set out the judge has not made a material error of law.

**Notice of Decision**

25. I dismiss the appeal.
26. I do not make an anonymity direction



Signed

Date 13<sup>th</sup> June 2018

Deputy Upper Tribunal Judge McClure