



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/02507/2016  
IA/02508/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 5 September 2018

Decision & Reasons Promulgated  
On 11 September 2018

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

MR MOHAMMED JASHIM UDDIN  
TANIA AKHTER  
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Mr M Hossain, Chancery Solicitors

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

**DECISION AND REASONS**

1. The Appellants are citizens of Bangladesh. They are married to each other. Mr Uddin's date of birth is 25 May 1979. Mrs Akhter's date of birth is 1 January 1989. Mrs Akhter's application is dependent on her husband's. I shall refer to Mr Uddin as the Appellant throughout this decision.

2. On 26 June 2014, before the expiry of his leave on 28 June 2014, the Appellant made an application for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant under the points-based system. The application was refused by the Respondent. The Appellant appealed. His appeal was allowed by the First-tier Tribunal, following a hearing on 22 January 2016. First-tier Tribunal Judge Lamb allowed the appeal finding as follows:

“... She [the Secretary of State] therefore agreed that the outcome of the appeal should be that the Tribunal allow the appeal and remit for reconsideration. The Appellant should have 60 days from that determination.”

3. On 6 October 2016 the Respondent reconsidered the Appellant’s application and maintained the refusal decision. The Appellant appealed against the decision of 6 October 2016. The appeal was dismissed by Judge of the First-tier Tribunal Brewer in a decision promulgated on 8 January 2018, following a hearing at Taylor House on 24 November 2017. Permission was granted to the Appellant by Judge of the First-tier Tribunal P J M Hollingworth in a decision of 29 April 2018. The matter came before me on 11 June 2018 to determine whether Judge Brewer made an error of law.
4. I decided that Judge Brewer had materially erred and set aside the decision to dismiss the appeal. The Appellant in response to Judge Lamb’s decision had been sent a biometric enrolment letter by the Respondent. This is referred to as a “BRP letter.” BRP letters invite applicants to have their biometrics taken within 15 days as part of their application. A failure to do so results in an application being determined as invalid. The BRP letter sent to this Appellant contained a typographical error and it was defective. The Appellant asked for an amended BRP letter in email correspondence from his solicitors, London Law Associates, on 15 March and 20 May 2016 (see page 39 and 40 of the AB). These were not considered by the judge. The Appellant was not sent a 60-day letter after the decision of Judge Lamb.
5. I set out in my error of law decision why the Judge Brewer materially erred:
  - “10. There is evidence of correspondence from the Appellant’s then instructed solicitors. In my view, it would take the reader some time and effort to understand exactly what was complained about and requested, but it is possible to discern this. I accept that it is not entirely clear whether the judge took this correspondence into account.
  11. The old statutory regime applies. There was a ground of appeal open to the Appellant pursuant to Section 84(1)(e) of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”).
  12. The Appellant raised fairness at the appeal before the First-tier Tribunal. Although the judge determined that the decision was in accordance with the law, I am satisfied that she did not specifically engage with the issue of fairness in the light of the correspondence of 15 March and 20 May 2016.

The intention behind Judge Lamb's decision was to give the Appellant the opportunity to obtain and submit a new CAS. Bona fide Sponsors are unable to enrol prospective students without leave to remain in the absence of a 60-day letter/BRP. I accept that without such a document the Appellant would have difficulty persuading a reputable college to enrol him on a course. Although the judge lawfully concluded at paragraph 39 that there was no evidence of any applications or objections from any Tier 4 Sponsor, I am satisfied that she did not consider correspondence from the Appellant's solicitors requesting an amended BRP letter. I am satisfied that had this been brought to her attention, she may have reached a conclusion that the decision was not in accordance with the law on fairness grounds (**Patel (revocation of sponsor licence – fairness) [2011] UKUT 00211**). The judge materially erred.

6. Mr Bhulyan submitted at the hearing on 11 June 2018 that the failure to provide a 60-day letter was a breach of the Secretary of State's own guidance. He referred me to Tier 4 Policy Guidance Version 10/2013 page 64 of 77, attached to the grounds seeking permission. It states as follows: -

“In all cases we will write to you informing you of the date by which you should provide a new CAS. If you fail to provide a new CAS within the specified period your application will be considered on the basis of the evidence submitted with your application.”

7. At the hearing on 11 June 2018 the Respondent made an application pursuant to Rule 15(2)(a) of the 2008 Procedure Rules to submit in evidence an amended BRP letter dated 5 May 2016. This was according to the Respondent sent to the Appellant. It was accepted that the document was not before the First-tier Tribunal because of an oversight by the Presenting Officer with conduct of the case. However, in the light of the importance of the letter, Mr Kotas submitted that it was in the interests of justice that it be admitted. Mr Bhulyan objected to the admission of the document.
8. I did not admit the letter of 5 May 2016 to determine the error of law matter. However, it was admitted for the purpose of remaking the decision. I adjourned the matter to give the Appellant the opportunity to consider this evidence and provide further evidence should he wish to. The hearing was resumed on 5 September 2018.
9. At the resumed hearing the Mr Hossain clarified the issues. The Appellant's case was that there was unfairness by the Respondent arising from the failure to issue the Appellant a 60-day letter or a BRP letter. I heard evidence from the Appellant. He adopted his witness statement of 7 August 2018. His evidence was that he did not receive the letter from the Respondent of 5 May 2016 and was not aware of it until 11 June 2018. His solicitors had not received it. From 20 May 2016 until the date of the decision (6 October 2016) there was no communication with the Home Office. The Appellant was waiting during this period for an amended BRP or 60-day letter so that

he could enrol on a course. His oral evidence was that he approached one potential Sponsor to enrol on a course and was told by that Sponsor that he needed a 60- day letter. Later in his evidence he identified the Sponsor as BPP University (Waterloo campus) and stated that he intended to complete an ACCA qualification.

10. I heard submissions from the Respondent. It was accepted that the Appellant was not sent a 60-day letter and that the first BRP letter was defective. However, he was sent an amended BRP letter to which he failed to respond. The Respondent received the email from the Appellant's solicitors of 15 March 2016 and as a result issued an amended BRP letter. However, the Respondent did not receive a second email from the Appellant's solicitors of 20 May 2016. Even if it were sent, there was no further communication from the Appellant's solicitors despite the delay in making the decision. It was not necessary to issue a 60-day letter to the Appellant. I was referred to two policy documents; Tier 4 of the Points Based System Policy Guidance version 10/13 and version 07/16. The latter was material to the decision under appeal, but it was conceded by Ms Fijiwala that it was not complete. She referred me to page 78 of 93. Mr Hossain made submissions. He relied on the email sent to the Respondent on 20 May 2016 and the failure of the Respondent to issue an amended BRP letter. He stated that the Appellant needed a valid BRP letter or a 60-day letter to obtain a CAS. He relied on the earlier version of the guidance (see paragraph 6 above) and argued that the decision was not in accordance with the guidance because the Appellant should have been sent a 60 day-letter.
11. The decision of the Secretary of State on 8 April 2015 was found by Judge Lamb not to be in accordance with the law and as such the application remained outstanding. That decision has not been challenged in any proceedings. According to the Appellant he was given a further opportunity to vary his leave by submitting a CAS within 60 days which elapsed on 28 March 2016. For reasons that are explained later in this decision, the decision of Judge Lamb has been wholly misinterpreted by the Appellant. The issue was not raised by the Respondent. I shall proceed, for now, on the basis that the Appellant is correct in the interpretation and implication of the decision of Judge Lamb.
12. In response to the decision of Judge Lamb the Respondent issued a BRP letter on 26 February 2016. It was addressed to the Appellant at his solicitor's address. It was received by the solicitors and seen by the Appellant. It is accepted by the Respondent that this letter was defective and the Appellant was unable to use it. A new letter was issued on 5 May 2016 in response to an email from the solicitors dated 15 March 2016. (The amended letter was issued on 5 May 2016 outside the 60- day period). The second letter was addressed in the same way as the defective letter. The Appellant's evidence was that his solicitors had not received the letter. There was no evidence from the Appellant's solicitors about this. The Appellant stated that he was not aware of the amended letter of 5 May 2016 until 11 June 2018. At the hearing before me the Appellant's case was that he did not receive the amended BRP letter and that is why his solicitors sent the email of 20 May 2016.

13. I find that the letter of the 5 May 2016 was posted by the Respondent to the Appellant's solicitors. I accept that the Appellant had not seen it until 11 June 2018. I find that it was either not received by his solicitors or they overlooked it. There is no evidence from them. Given they sent a further email on 20 May 2016, I accept that at least the author of that email was not aware of the letter. I find that the email of 20 May 2016 was sent by the Appellant's solicitors to the Respondent's email address. However, I find that it was not acknowledged or picked up. This is likely to have been an oversight by the Respondent. I find that the Respondent was not aware that the amended BRP had not been received by the Appellant; however, he should have been concerned that it may have been the case had he properly considered the email of 20 May 2016.
14. I do not accept that the 2013 or 2016 guidance requires the Respondent to provide a 60- day letter in this case. I do not find that fairness demanded that a 60- day letter was sent to the Appellant. The Appellant was aware of the decision of Judge Lamb. Those representing the Appellant explained their interpretation of the decision to their client which was that the Appellant had 60 days to submit a valid CAS. This was clearly the Appellant's understanding of the matter. The position of the Appellant in the light of the decision of Judge Lamb was different to that envisaged in the guidance (both versions) where an applicant may be unaware of the revocation of a Sponsor licence and or has not been given adequate time to seek a new Sponsor. In both these scenarios fairness demands a 60- day letter to be issued to an applicant. It is worth noting that this Appellant has at no time requested a 60-day letter from the Respondent.
15. I accept that without leave the Appellant would not be able to enrol on a course which would present a practical barrier to obtaining a CAS. A 60-day letter would allow him to enrol on a course. Alternatively, as accepted by Mr Hossain, a BRP letter would enable the Appellant to have biometrics taken which would have enabled the Respondent to consider his application and grant him leave. This would have enabled him to obtain a CAS.
16. A failure by the Respondent to provide the Appellant with a BRP letter/60-day letter which would prevent the Appellant producing a CAS and thereby rendering Judge Lamb's decision meaningless could amount to unfairness giving rise to the decision not being in accordance with the law. From the evidence, I conclude that the Respondent failed to act on the Appellant's email of 20 May 2016; however, this does not in itself amount to unfairness. It was an oversight which the Appellant's solicitors did not seek to rectify. Whilst I accept that initial attempts were made by the Appellant's solicitors to obtain an amended BRP letter, the Appellant did not either personally or through his solicitors contact the Respondent after 20 May 2016. This is not consistent with someone who is keen to study here. I found the Appellant's evidence about efforts he has made to study here and his intentions to be vague and unsupported. The 60-day time limit given by Judge Lamb was not realistic in the light of what occurred; however, nothing turns on this in the light of the extensive time the Appellant had to rectify matters before the date of the decision and his failure to do

so. I accept that the decision of 6 October 2016 makes no reference to the BRP letters, but nothing turns on this point. For the above reasons the decision of the Secretary of State is in accordance with the law.

17. Judge Lamb's decision deserves further scrutiny because it wholly undermines the Appellant's case. In the light of the decision of Judge Lamb the Appellant's appeal is not capable of succeeding. The Appellant's sponsor's licence had been revoked and the Respondent's case was that he had failed to submit a valid CAS within the 60-day period that he had already been given. The Appellant's case before Judge Lamb was that he had submitted a valid CAS which had not been considered by the Respondent. It was not his case that he had not been given 60- days by the Respondent. The Presenting Officer before Judge Lamb was not able to confirm what correspondence had been sent to the Respondent. Judge Lamb decided to "remit [the case] for reconsideration" and she gave the Appellant 60 days (see [7] of Judge Lamb's decision). The judge allowed the appeal on the basis that "the Respondent will consider fresh applications from the appellants" (see the notice of decision). If the decision is considered as a whole it is clear that the issue was whether the Appellant had, as he claimed, submitted a valid CAS within the timeframe. The judge was effectively giving the Respondent further time to consider the correspondence that the Appellant claimed to have sent including a valid CAS. What is clear is that the Appellant has not in these proceedings pursued the case he argued before Judge Lamb. Rather he has sought to rely on Judge Lamb having granted him 60 days to seek a new Sponsor. Whilst he was given 60 days, it is clear from the decision that he had already been given 60 days and the issue was not fairness relating to this but whether the Respondent had considered the CAS that the Appellant claimed to have submitted. Neither party raised the issue of Judge Lamb's decision. It seems that Judge Brewer did not grapple with it. However, it is difficult to reconcile the decision with the Appellant's case advanced before the FtT and UT. It undermines his case that he has departed from what was argued before Judge Lamb. The Appellant has not advanced his case on the basis that the Respondent did not re-consider the application taking into account a valid CAS.

18. The decision of the Secretary of State is in accordance with the law.

19. The appeal is dismissed.

No anonymity direction is made.

Signed Joanna McWilliam

Date 6 September 2018

Upper Tribunal Judge McWilliam