



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/03015/2013

THE IMMIGRATION ACTS

Heard at Field House
On 25th September 2013

Determination Promulgated
On 25th September 2013

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR MUHAMMAD USMAN KHALIQ
(ANONYMITY ORDER NOT MADE)

Claimant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Balroop (instructed by Bishop, Lloyd & Jackson Solicitors)
For the Respondent: Mr N Bramble (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Appellant against a determination of the First-tier Tribunal (Judge Meah) promulgated on 8th May 2013 by which he dismissed the Appellant's appeal against the Secretary of State's decision to refuse him leave to remain as a Tier 4 (General) Student Migrant.

2. The documents in this case have led to a degree of confusion. It is now accepted by both sides however that the situation in this appeal is this. The Appellant submitted an application in October 2012 for leave to remain as a Tier 4 (General) Student Migrant submitting a CAS that had been issued by the British School of Management Sciences in September 2012. In December 2012 UKBA wrote to that College informing it that it now had only legacy status and was unable to issue any further CAS documents to new students, they were to be restricted to students partway through a course. In January 2013 the Secretary of State refused the Appellant's application on the basis that the CAS was thus invalid.
3. The First-tier Tribunal found against the Appellant on the basis that the letter of December 2012 to the college from UKBA referred to an earlier decision made in April 2012, before the date of the application. However, that is incorrect. The letter of December 2012 referred to the policy change announced by the government in April 2011. There was no decision in relation to this College in April 2011 or April 2012 altering its status. There was a letter in April 2012 from UKBA to the college but that simply confirmed its status as a Highly Trusted Sponsor. The First-tier Tribunal therefore made a mistake of fact which amounts to an error of law and I set the decision aside.
4. The situation is that at the time when the Appellant obtained his CAS and at the time that he submitted his application the CAS was valid. It was invalidated between the date of application and the date of decision, a factor which could not be known to the Appellant. The Secretary of State should therefore have reverted to the Appellant giving him a 60 day window in which to supply a valid alternate CAS. In failing to do so the Secretary of State acted unlawfully rendering the decision of January 2013 not in accordance with the law. I therefore, having set aside the decision of the First-tier Tribunal redecide the appeal and allow it to the extent it is remitted to the Secretary of State for a lawful decision to be made. It was agreed by Mr Bramble that was the appropriate course.
5. The appeal to the Upper Tribunal is allowed.

Signed

Date 25th September 2013

Upper Tribunal Judge Martin