



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/06995/2013

THE IMMIGRATION ACTS

Heard at Field House
On 1 November 2013

Oral Determination
Promulgated
On 14 November 2013

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

YUSUF OLATUNJI MUSTAPHA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Ms J. Isherwood, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria who was born on 14 January 1975. He appeals against the determination of First-tier Tribunal Judge Grimmett promulgated on 24 May 2013 in which she dismissed the appellant's appeal in relation to a decision

made by the Secretary of State to refuse his application as a Tier 4 (General) Student Migrant. The decision was made on 20 February 2013.

2. The history of the application is somewhat complicated. The appellant made an application on 29 February 2012 which was in the form of a combined application for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant under the points-based system and for a biometric residence permit. The application ran into difficulties because the college - the Lincoln College - had ceased to qualify as a college for the purposes of the appellant's student status. Accordingly, a letter was written on 31 May 2012 to the appellant saying that a decision had been made on 23 May 2012 to revoke the licence of Lincoln College, London. That decision was made just a week before the letter was written on 31 May 2012. Accordingly, it did not provide the appellant with sufficient time to make arrangements for further education at an alternative college. Following the decision of the Tribunal in *Patel and Patel v SSHD* [2012] EWCA Civ 741, the Secretary of State therefore gave the appellant 60 days in which to submit a further application. The letter said:

"Before the final decision is made, and in line with our Rules and guidance, we will suspend consideration of your application for a period of 60 days. During this 60 day period it is open to you to withdraw your application and submit a fresh application in a different category or to leave the United Kingdom. If you decide to withdraw your application you will need to confirm this in writing at the address given at the top of this page. However if you wish to remain in the United Kingdom as a Tier 4 Student, it is open to you to obtain a new CAS for a course of study at a fully licensed Tier 4 educational sponsor and then submit a application to vary the grounds of your original application."

Then in bold type on the following page of the letter the following occurs:

"Important - please note:

You should take a copy of this letter along with the copy of your passport and the Sponsor's leaflet with you when you approach any potential new Tier 4 Sponsors. If you obtain a new CAS, then you will need to submit a fresh and up to date document with your application to vary, for example, bank statements showing you are in possession of sufficient funds to cover your course fees and the maintenance requirement. You will need to complete a fresh Tier 4 (General) application form - the most up to date version of this form is available on the UKBA website."

3. In accordance with that direction it is the appellant's case that he did indeed submit an application and that application was made on 17 August 2012. This related to a second college and this was Shepherd College where he was intending to study a Diploma in Business Management. The application that I have before me is incomplete but in any event I am told by Ms Isherwood who appears on behalf of the Secretary of State that there were passages within it which does not make it entirely clear whether the fee had been paid or whether it was treated as a valid fresh application. In any event the result was that a further check was made on Shepherd

College in February 2013 when this second application was submitted and it was found that this college too had ceased to have the status required for it to provide the appellant with further education. The application was refused by a decision made on 20 February 2013.

4. When this appeal was opened to me by Ms Isherwood it was on the basis that there had been an application made on 29 February 2012 which was refused on 20 February 2013, nearly a year later, and in the course of that year the appellant had taken no appropriate steps to find a substitute college.
5. The argument would have been in my judgment a successful one if what we were considering was a single application made on 29 February 2012 which was held over, as it were, permitting the appellant 60 days in which to find an alternative provider which he failed to do. In those circumstances it would be very easy to see what happened on 20 February 2013 as being the logical conclusion of the offer which had been made on 31 May 2012 which had simply not been complied with. However there is at least an arguable case (and it may be more than this) that a second application was made on 17 August 2012 which, if an appropriate fee had been paid, would have then been the application that subsequently required consideration. The application that had previously been made on 29 February 2012 would simply have been no more. The decision maker would have been required to make a fresh decision on the fresh application made on 17 August 2012 following the invitation advanced in the letter of 31 May 2012.
6. It also seems to me to follow that if the appellant had paid a fresh fee and had made a fresh application then he should have stood in exactly the same position as he stood at on 31 May 2012 and would have been entitled to receive a letter which was in similar form to the letter that he had received on 31 May 2012 and he would then have been able to take that subsequent letter to a third college and that third college would have been in a position to provide him with a CAS letter. Without that letter written by the Home Office, he was not in a position to do so. Thus it all seems to depend on whether the application of 17 August 2012 was a second valid application requiring the same treatment as any other valid application including a 60 day reconsideration period in the event of the college ceasing to operate as he had been offered earlier on.
7. Conversely, if all we were looking at was a continuation of the original application of 29 February 2012 in which he had been given an opportunity by the letter of 31 May which he had failed to make good, then the decision that was subsequently made on 20 February 2013 appears unimpeachable.
8. It is not possible to say whether there was such a valid application made on 17 August 2012 and consequently I cannot resolve that issue by allowing the appeal outright.
9. However, what is apparent from the decision that was made on 20 February 2013 was that no appropriate thought had been given to the subsequent application that

had been made on 17 August 2012. It appears that it was taken into account in some way because there is reference to the Shepherd Business School as being the appropriate college for consideration of the Tier 4 sponsorship. Indeed it appears from the letter of 20 February 2013 that the Secretary of State was considering whether 30 points should have been awarded in relation to a valid Confirmation of Acceptance for Studies assigned by Shepherd College. It cannot therefore be said that the Secretary of State was unaware of the new application that had been made. If therefore the Secretary of State was under a duty to treat this as a fresh application it also seems at least arguable that the Secretary of State was also required to adopt the same fairness principles in relation to the discovery that the college was no longer on the list. That is not something which is considered in the letter of 20 February 2013 rendering the letter as *Wednesbury* unreasonable because it fails to take into account a significant part of this application. In those circumstances I allow the appeal to the limited extent of requiring the Secretary of State to make a fresh decision where she takes into account the considerations that I have made above in relation to the application that was made on 17 August 2012.

10. There is also an additional point and indeed this was the only point upon which leave was expressly granted and that was that there was in this case a Section 47 removal decision that was made at the same time as the decision on 20 February 2013. It is now common ground that that decision was a wrong decision but it does not invalidate the remainder of the decision nor does it permit the Tribunal to avoid making findings on the substantive application. As a result of the decision in *Ahmadi* [2013] EWCA Civ 512 and *Adamally & Jaferi* [2012] UKUT 244 the decision to make an order under Section 47 was unlawful. The Secretary of State accepts that and a fresh removal decision would have been made in any event. However, that process has now been put on hold by reason of the requirement imposed by the Upper Tribunal by this decision that the Secretary of State should make a fresh decision taking into account the factors that I have explained.
11. This was not a matter that was explored in the decision of the First-tier Tribunal Judge and this amounts to an error on a point of law.

DECISION

The decision of the First-tier Tribunal discloses an error of law and the appeal is allowed to the limited extent of requiring the respondent to make a fresh and lawful decision on the applicant's application which remains outstanding.



ANDREW JORDAN
UPPER TRIBUNAL JUDGE