



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/26378/2012

THE IMMIGRATION ACTS

Heard at Field House
On 23 August 2013

Determination Promulgated
On 10 September 2013

Before

UPPER TRIBUNAL JUDGE KING TD

Between

ABDUL FAHAD KHAN MOHAMMED

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Khan, of Counsel
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of India, born on 12 June 1986. He appeals against the decision of the respondent dated 3 October 2011 refusing to grant him leave to

remain in the United Kingdom as a Tier 4 (General) Student Migrant pursuant to paragraph 245ZX of the Immigration Rules.

2. The respondent in her letter dated 31 October noted that the appellant had not provided a valid CAS reference number and therefore concluded that he did not satisfy the Immigration Rules.
3. The background to the matter was that the appellant had been a student at the Royal London College. His application on 2 April 2011 for further leave to remain was refused because the college licence had been revoked. The appellant had appealed against that decision and the Immigration Judge had ordered that he be given six months to obtain a fresh CAS.
4. The appellant's new college Lincoln's College, London licence was revoked on 23 May 2012. The appellant received a letter from the respondent dated 21 June 2012 allowing him 60 calendar days to submit his CAS.
5. However the appellant had applied for a driving licence and had forwarded his original passport to the DVLA. He applied to obtain his passport back from DVLA but received no response.
6. The appellant approached several colleges to obtain a fresh CAS but was turned down because he did not have the passport. It then transpired that the DVLA had sent his passport to the Home Office. The appellant requested that the respondent return his passport in order to enable him to enrol at the college and obtain a CAS letter. In response on 31 October 2012 the respondent refused his application for leave to remain.
7. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Chana by way of a paper case. The Judge was not satisfied as to the situation regarding the passport and upheld the decision of the Secretary of State. She dismissed the appeal.
8. Grounds of appeal were submitted essentially on the basis that the passport was with the respondent and that it was unfair of the judge to have found otherwise.
9. Thus the matter came before me on 17 July 2013. A letter from the DVLA was produced which confirmed that the passport had been sent to the Home Office. Mr Wilding who represents the respondent had no knowledge of that particular letter and needed time to make enquiries about the situation. Thus the matter was adjourned For Mention to 23 August 2013.
10. On that occasion Mr Wilding confirmed that the passport was indeed with the respondent and it was understandable therefore why in those circumstances the appellant had not been able to obtain a valid CAS from another provider. Mr

Wilding indicated that in the circumstances he sought to withdraw the decision of 21 June 2012.

11. Although the withdrawal of the decision would normally put an end to the appeal process in the First-tier Tribunal that does not necessarily apply within the Upper Tribunal. I note Rule 17 of the Tribunal Procedure (Upper Tribunal) Rules 2008 that the notice of withdrawal will not take effect unless the Upper Tribunal consents to the withdrawal except in relation to an application for permission to appeal. The party may withdraw its case but that does not necessarily dispose of the appeal before the Upper Tribunal.
12. The essence of the appellant's appeal is to the effect that it was unreasonable for the respondent to have issued a refusal in the circumstances when she had his passport, thereby effectively preventing him doing that which he had been allowed leave to do, namely to find another provider. Mr Wilding by his application clearly accepts that the decision was defective and that the appellant should be allowed further leave to obtain the CAS.
13. In the circumstances I shall treat the application for withdrawal as an acceptance of the complaint by the appellant that it was unfair in all the circumstances.
14. In that situation I find the immigration decision was not in accordance with the law. It shall therefore be set aside to be remade. To that extent therefore the appeal is allowed.
15. Mr Wilding indicated that a letter would be sent to the appellant offering him 60 days to find alternative educational support. That letter will contain certified copies of all relevant identification documents to enable the appellant to do so.

Signed

Date

Upper Tribunal Judge King TD