



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/03196/2014  
IA/03200/2014  
& IA/03203/2014

**THE IMMIGRATION ACTS**

**Heard at Field House, London**

**Determination  
Promulgated**

**On 4 November 2014**

**On 12 November 2014**

**Before  
DEPUTY UPPER TRIBUNAL JUDGE ROBERTSON**

**Between**

**MR MALIK ABDUL RAUF AWAN (A1)  
MRS ZUBAIDA ABDUL RAUF AWAN (A2)  
MISS LARAIB ABDUL RAUF AWAN (A3)  
ANONYMITY DIRECTION NOT MADE**

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr Nasim, Counsel, instructed by Lee Valley, Solicitors  
For the Respondent: Mr Avery, Presenting Officer

**DETERMINATION AND REASONS**

**Introduction**

1. A1, a male citizen of Pakistan, applied for leave to remain as a Tier 1 (Post Study Work) Migrant pursuant to para 245FD of HC 395, as amended (the Immigration Rules) on 4 April 2012. The appeals of A2

and A3 are dependent on the application of A1. I will therefore refer only to A1 within my determination.

2. As to the facts of the case, A1's application for leave to remain was refused by the Respondent on 27 September 2012 on the basis that A1's qualification, a Master of Business Administration (the relevant qualification for the purposes of paragraph 245FD (c) and Table 10 and paragraph 55 of Appendix A to the Immigration Rules, hereinafter referred to as the award), was not obtained by A1 until after the date of application. This is because with his application the Appellant provided a letter from his college, Kaplan Financial (Kaplan) dated 2 April 2012 confirming that the date of his award was 11 April 2012. A1 requested a reconsideration on 15 October 2012, providing a further letter from Kaplan, dated 10 April 2012, confirming that the date of the award was 4 April 2012. The reconsideration request was refused by the Respondent on 4 October 2013 and a removal decision was issued on 15 November 2013 against which A1 had a right of appeal. First-tier Tribunal Judge Cameron (the Judge) dismissed A1's appeal against the removal decision.
3. The Appellants sought permission to appeal on the basis that:
  - a. The Judge was aware that the Respondent had before her the letter from Kaplan dated 10 April 2012. He erred at [34] in stating that leave under s 3C of the Immigration Act 1971 (the 1971 Act) ended after the reconsideration decision. An appeal was lodged and a Duty Judge had determined that it was in time and therefore leave was continuing for the purposes of s 3C;
  - b. As the request for reconsideration was made whilst A1 had extant leave, and the Respondent had the Kaplan letter of 10 April 2012, the Judge erred at [34] in stating that the decision dated 27 September 2012 was correct because "once the reconsideration request is entertained the previous decision stands withdrawn and decision on reconsideration is to be judicially scrutinised" (grounds, paragraph 7);
  - c. The Judge did not determine A1's claim that refusing his request for a grant of leave under the Tier 1 (PSW) route is discriminatory treatment and not in accordance with Article 6 of the Human Rights Act 1998;
  - d. Given the Judge's finding at [43], that "...the Respondent does not appear to have engaged properly with the fact that A1s (sic) qualification was obtained prior to his application and that this therefore may amount to arguably good grounds for granting leave outside of the Immigration Rules...", the Judge should have allowed the appeal under Article 8 as well or at least remitted it to the Respondent for further consideration and grant. This was particularly the case because it was stated in **Mahad [2009] UKSC 16** that the Rules were not to be interpreted with the same strictness applicable to the construction of a statute or statutory

instrument but were to be construed sensibly according to the natural and ordinary meaning of the words.;

- e. A1 had legally been residing in the UK throughout and he had a legitimate expectation to continue his career in the UK.
4. Permission was granted on the basis that "...the Tribunal should have considered allowing the appeal on the ground that the Secretary of State acted unfairly in refusing further leave to remain due to circumstances beyond A1's control, and that the decision of the 4th October 2013 (which maintained an earlier decision to refuse leave to remain) was thus not in accordance with the law."
  5. The Respondent submitted a Rule 24 response, submitting that the Judge directed himself appropriately, that it was not the fault or responsibility of the Respondent that the documentary evidence provided by A1 prior to the date of refusal confirmed that the date of the award fell outside the scheme closure date, and that the Respondent had not managed to find any evidence that an earlier date of award had been supplied and in any event the decision made was based on the evidence available to the Respondent at the time.
  6. In his submissions before me, as to chronology, Mr Nasim stated that:
    - a. A1 submitted with his application for leave a letter from Kaplan Financial (Kaplan), the institution at which he studied, dated 2 April 2012 in which it was stated that the date of the award was 11 April 2012;
    - b. His application was refused on 27 September 2012 because the award post-dated the application. He did not have a right of appeal as he had extant leave until 30 October 2012;
    - c. He asked the Respondent to reconsider his application on 15 October 2012, when he supplied a letter from Kaplan dated 10 April 2012 confirming that the date of the award was 4 April 2012;
    - d. The Respondent confirmed her original decision on 4 October 2013, after attempts by A1's representatives and by the local MP to obtain a response. In the refusal, the Respondent referred to the original basis for the refusal, that being that the award post-dated the date of application. A1 did not have a right of appeal because he did not have extant leave.
    - e. A removal decision was issued on 15 November 2013 which resulted in a right of appeal. On appeal, the Judge found that the Respondent appeared to have before her, when A1's application was reconsidered, the letter from Kaplan dated 10 April 2012 but made no reference this in the refusal letter of 4 October 2012. The Judge, however, found that the Respondent was entitled to issue a removal decision on 15 November 2013 because A1 did not have extant leave.

7. Mr Nasim submitted that the Judge stated that A1 "...appeared to have met the requirements" [48], that the Respondent had not "...engaged properly..." with the evidence [43] and that he had "...great sympathy..." for the Appellants. He also found that the date of the award was 4 April 2012 [34]. Mr Nasim accepted that A1 could not make an application to vary leave on 15 October 2012 when he applied for reconsideration, because the PSW route was closed on 6 April 2012 and he could only therefore seek reconsideration. He submitted that in view of the chronology and the Judge's finding as to the date of the award, the Judge failed to engage with the evidence before him in relation to the reconsideration decision. On the Judge's findings, A1 met the requirements at the date of application.
8. I pointed out to Mr Nasim that the Judge did not make a firm finding that the letter from Kaplan dated 10 April was in fact before the Respondent when the reconsideration decision was made. He submitted that the Judge stated that the evidence before him indicated that the date of the award was 4 April 2012 [34].
9. Mr Nasim accepted that A1 was appealing against the removal decision [2] but submitted that it was open to the Judge to find that the decision to remove was not in accordance with the law because the removal decision was issued on the basis that A1 had no extant leave, which in turn was based on the decision of 4 October 2013 and the concept of fairness played a part in the decision-making process. The failure by the Respondent to consider the evidence made the decision to remove 'not in accordance with the law'. He asked how the decision to remove could be lawful when the Respondent had not engaged with important evidence.
10. Mr Nasim also submitted that the Judge had before him evidence from other students in A1's position who had been granted leave under the PSW route and the Judge did not deal with this aspect of the case. At p 6 of A1's bundle, which was before the Judge, were letters from Kaplan which confirmed the dates of the beginning and end of the award for A1 and the others in his position and the date of the award was incorrect on A1's letter. This was subsequently corrected by Kaplan in their letter of 10 April 2012, in which it was confirmed that since their letter of 2 April 2012, "...Liverpool John Moores University (the awarding body) have confirmed the marks..." and the date of the award is given as 4 April 2012. However, the Judge simply focussed on the leave issue (and may have been right on the leave issue as far as the lack of leave was concerned) but the removal decision was unlawful.
11. Mr Avery submitted that there was simply no case to answer; the Respondent was correct to refuse the application on 27 September 2012 due to the evidence provided and that decision could not be impugned. The application for reconsideration does not extend leave under s 3C. The initial decision was correct and the Respondent was not under any duty to do more. The mistake in the letter of 2 April

2012 from Kaplan was not the mistake of the Respondent. A1 had no right of appeal. He could not benefit from s 3C leave. The Judge was correct. If A1 had provided the further letter from Kaplan dated 10 April 2012 before the date of the decision on 27 September 2012, it may have been a different case. It was not clear from the evidence that A1 did provide it with the reconsideration request.

12. He also submitted that to engage the common law principle of fairness, the decision had to be procedurally unfair, as stated in **Marghia (procedural fairness) [2014] UKUT 00366 (IAC)**, or Wednesbury unreasonable. The Respondent was not under a duty to reconsider a decision and was entitled on reconsideration to decide that the first decision was correct. The removal decision was lawful and the grounds amounted to no more than a disagreement with the findings of the Judge. The Judge was generous in his interpretation of the situation and took this into account in his assessment under Article 8.
13. As to the situation of other applicants referred to by Mr Nasim, Mr Avery submitted that it is never easy to be clear as to the basis on which leave was granted; it was not clear if the other applicants submitted their evidence before the date of the original decision or on a reconsideration request. It was therefore difficult to see if the situations were like. There is no statutory appeal if a decision is reconsidered.
14. In response, Mr Nasim reiterated the chronology and stated that the Judge's decision at [35] and [36] could not be sustained because he states that "Although it is clear that the Respondent does not appear to have properly engaged with the new evidence sent in with the reconsideration request that does not make the section 10 removals unlawful." **Naved (Student - fairness - notice of points) Pakistan UKUT 00014 (IAC)** made it clear that the failure to consider new evidence made a decision unlawful. If only the evidence provided at the date of decision was to be considered, what was the point of a reconsideration request?
15. Following submissions, I reserved my decision. Mr Nasim submitted that if I were to find that there was a material error of law, the appropriate future course of action was for me to find that the removal decision was not in accordance with the law and to remit the matter back to the Respondent to consider the new evidence.

### **Analysis and reasons**

16. The only letter submitted by A1 with his application was the letter from Kaplan dated 2 April 2012 in which the date of the award was given as 11 April 2012. The Judge was therefore not wrong in concluding, at [28], that it was not supplied at the date of application or before 27 September 2012 and therefore that that decision was lawful.
17. I accept Mr Avery's submission that inconsistent treatment as between A1 and others in his position has not been established. All the letters

adduced show is that Kaplan issued letters to two other applicants dated 2 April 2012 in which the date of the award was confirmed as 4 April 2012. If this was submitted with their applications (and we do not know this because insufficient evidence was provided), it is likely that their applications for further leave would have been successful if all other requirements were also met. Whilst the Judge did not deal with this issue specifically, there was insufficient material before him to find that the treatment as between applicants was inconsistent or that A1 was discriminated against in any way. The Judge did not therefore materially err in law.

18. It is incorrect to state (as submitted in the grounds of application) that the reconsideration request operated to extend leave resulting in a right of appeal when the decision was taken by the Respondent on 4 October 2013. There is no authority before me to confirm that an application for reconsideration has the effect of extending leave under s 3C of the 1971 Act. This provides:

“3C Continuation of leave pending variation decision

(1) This section applies if—

- (a) a person who has limited leave to enter or remain in the United Kingdom applies to the Secretary of State for variation of the leave,
- (b) the application for variation is made before the leave expires, and
- (c) the leave expires without the application for variation having been decided.

“2. The leave is extended by virtue of this section during any period when—

- (a) the application for variation is neither decided nor withdrawn,
- (b) an appeal under section 82(1) of the Nationality, Asylum and Immigration Act 2002 could be brought, while A1 is in the United Kingdom against the decision on the application for variation (ignoring any possibility of an appeal out of time with permission), or
- (c) an appeal under that section against that decision, brought while A1 is in the United Kingdom, is pending (within the meaning of section 104 of that Act).”

19. A1’s application was decided on 27 September 2012. Mr Nasim confirmed that A1 could not make an application to vary in October 2012 because the PSW route was closed. In the absence of an application to vary existing leave, s 3C does not operate to extend leave.

20. The further submission in the grounds, which appears to indicate that an appeal was in fact lodged against the reconsideration decision and accepted by a duty judge as a valid appeal, on the evidence before me, was not, factually correct. Mr Nasim confirmed that the decision appealed against was the decision to remove, as recorded at [2]. His submission was that the removal decision was unlawful because the Respondent failed to engage with the evidence that was submitted with the reconsideration request.
21. Although Mr Nasim asked what the point of a reconsideration request was if new evidence was not going to be considered, I note that in the letter of refusal dated 27 September 2012, the Respondent does not invite A1 to request a reconsideration. He is simply invited to make a new application. The Respondent is not bound to reconsider a decision. In the circumstances, it was open to the Respondent to review the decision made on 27 September 2012 and confirm that it was correct on the basis of the evidence before her at the time it was made. The invitation by the Respondent in that letter was to make a new application. It was open to A1 to make a new application under a different route if he wished to remain in the UK to work. No authority was provided to me to establish that the Respondent is obliged to consider new evidence when a reconsideration request is made.
22. In view of the above, I cannot find that the removal decision was unlawful due to procedural unfairness. Whilst the circumstances which resulted in the refusal of A1's application on 27 September 2012 were beyond his control, it was not the Respondent who erred, or acted unfairly, in her decision on the evidence before her at that time. The decision of 4 October 2013 could only be 'not in accordance with the law' if the Respondent had erred in her consideration of the evidence before her when the decision was taken on 27 September 2012.
23. As to the submission, pursuant to **Mahad**, that the Immigration Rules should not be strictly construed, in that case, the Supreme Court was examining the ordinary meaning of the maintenance provisions for entry clearance applications under paragraph 284 of the Immigration Rules and determined that words should not be added to the relevant Rule. However, the ordinary meaning of the provisions of the Immigration Rules in relation to the PWS route was examined in **Raju and others v SSHD [2013] EWCA Civ 754** and applied in see **Nasim and others (Raju: reasons not to follow?) UKUT 00610 (IAC)**. There is nothing before me that establishes that when the ordinary meaning of the relevant Rule has been decided, it is possible to depart from it. There is no inconsistency between **Mahad** on the one hand and **Raju** and **Nasim** on the other.
24. With regard to the submission within the grounds that A1 had a legitimate expectation that he would be permitted to remain in the UK to work, this was not substantiated in the grounds or before me. There is no right under Article 8 to pursue a career in the UK. A1 came to the UK to study. He completed his studies. Having completed his studies, he has no right to remain or legitimate expectation that he will be

permitted to remain in the UK beyond the terms of his leave. There is no submission within the grounds (or by Mr Nasim) that the Judge's Article 8 assessment was flawed.

### **Decision**

25. I find that there are no material errors of law in the determination of Judge Cameron; the grounds are simply a disagreement with his findings. His decision must therefore stand.

26. A1's appeal is dismissed and, as the appeals of the other Appellant's are dependent on his appeal, they too are dismissed.

### **Anonymity**

27. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and immigration Tribunal (Procedure) Rules 2005 and I see no reason why an order should be made pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date **12 November 2014**

Manjinder Robertson  
Deputy Judge of the Upper Tribunal

TO THE RESPONDENT  
FEE AWARD

In light of my decision to allow the appeal to the limited extent that the decision of the Respondent is not in accordance with the law, I have considered whether to make a fee award. I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011) and as appeals have been dismissed, I make no fee award fee award.

Signed

Dated **12 November 2014**

M Robertson  
Deputy Upper Tribunal Judge