



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
IA/05583/2014**

APPEAL NUMBER:

THE IMMIGRATION ACTS

Heard at: Field House

**Determination
Promulgated**

On: 2 July 2014

On: 28 July 2014

Prepared: 17 July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

**MR THILAN DINIDU SAMPATH DEENIPITIYAGE DON
NO ANONYMITY DIRECTION MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: No representation

**For the Respondent: Mr E Tufan, Senior Home Office Presenting
Officer**

DETERMINATION AND REASONS

1. The appellant's solicitors, Jade Law Solicitors, sent a letter to the Tribunal dated 2nd July 2014 in which they stated that they are now instructed that the appellant will not attend or be represented at the "permission hearing" and the application should be decided in his absence on the basis of documents already submitted.
2. Enclosed was a witness statement of the appellant dated 2nd July 2014.

3. The appellant is a citizen of Sri Lanka, born on 21st February 1993. He entered the UK on 18th July 2011 in order to study. His leave as a Tier 4 (General) Student Migrant expired on 24th November 2013. He applied shortly before that to vary his leave to remain, to undertake a post-graduate diploma. That application was refused on 6th January 2014 as he had failed to meet the requirements of paragraph 245ZX(c) as he had not been awarded 30 points for his confirmation of acceptance for studies (CAS).
4. In addition, a decision was made by the respondent to remove the appellant from the UK by way of directions under s.47 of the Immigration, Asylum and Nationality Act 2006. His appeal against the refusal of his application was dismissed both under the Immigration Rules and on human rights grounds by First-tier Tribunal Judge in a determination promulgated on 11th April 2014.
5. The appeal before the First-tier Tribunal Judge I F Taylor, was decided on the papers.
6. At paragraph 10, Judge Taylor stated that the appellant's case was that when he applied for variation of his leave to enter on 23rd November 2013, Bell's College was a Highly Trusted sponsor. By the time the Tier 4 Sponsor Register was checked by the respondent on 30th December 2013 (five weeks later), it was a Legacy Sponsor.
7. The Judge accepted that the date of application was the appropriate date and it was for the appellant to establish on the balance of probabilities that on the date he applied for his leave to be varied, the college in question was a Highly Trusted sponsor. There was no issue that the proposed course of study at Bell's College was a new course of study at that institution.
8. However, the Judge was not satisfied that the appellant had established on the balance of probabilities that on the day he applied to vary his leave, the college was a Highly Trusted sponsor. The brief grounds of appeal merely asserted that the college was highly trusted, but there was no evidence to support that assertion, nor any evidence to explain why that assertion had been made.
9. On 21st May 2014, First-tier Tribunal Judge Molloy granted the appellant permission to appeal against that determination. Paragraph 2 of Judge Molloy's decision noted the following: the appellant argued that because his provider of education had Legacy status at the date that the respondent made her immigration decision, but had Highly Trusted status at the time his CAS was issued to him, the Judge ought to have applied decisions such as **Patel [2011] UKUT 2011** and **Thakur [2011] UKUt 00151** in his favour.

10. First-tier Tribunal Judge Taylor had also stated at paragraph 1 of his determination that it was reasonable to suppose that the s.47 decision under the 2006 Act had been withdrawn, given the Home Office policy on these matters in response to recent case law. However, that is incorrect as the law has subsequently been amended so as to permit a s.47 decision to be made at the same time as the refusal of an application under the Immigration Rules.
11. Judge Taylor had regard to the appellant's response to the refusal, which he set out at paragraph 9 of the determination. The appellant contends that he applied for a visa on 23rd November 2013 at a time when his college was an HTS college. The respondent made the decision on 30th December 2013 "and that it was not revoked, it was on Legacy." The immigration decision should have been made "on the date of application." He should have been given 60 days to get another letter and not have been refused.
12. The Judge accepted that the date of application was the appropriate date, but that it was for the applicant to establish that on that date the college in question was a Highly Trusted sponsor. He had not established that apart from an assertion in his grounds of appeal.
13. In his grounds for permission to appeal, the appellant asserted at paragraph 7 that his evidence was that Bell's College held a Highly Trusted sponsor status at the time of the issue of the CAS.
14. At paragraph 10, it is submitted that taking into account the testimony of the appellant, the college had a Highly Trusted sponsor licence at the time of the issue of the CAS, and that the Judge erred in law in stating that the brief grounds of appeal merely assert that the college was a Highly Trusted sponsor but that there had been no evidence in support of that assertion. He had been precluded from presenting additional evidence in view of his application being a points based application. Further, the First-tier Judge erred in failing to consider and comply with common law fairness as set out in **Patel**, supra and **Thakur**, supra.
15. The appellant did not attend the hearing and had as noted, not attended the hearing before the First-tier Tribunal Judge. On behalf of the respondent, Mr Tufan submitted that the First-tier Tribunal Judge directed himself appropriately. He relied on the Rule 24 response.
16. The appellant asserted that the college was a Highly Trusted sponsor at the date of application. It was for him to make out that case. The Judge erred in concluding that the material date for considering the status of the college was that at the date that the appellant's application was made. The appellant had to meet the rules as at the date of the decision

and if the college held Legacy status then, the application must in any event fail.

17. Whilst decisions such as **Thakur** might have been applicable if the appellant had established the sponsor's status at the appeal, the Judge had clearly found that he had not done so. The appellant had chosen to have a paper hearing and therefore restricted the opportunity for the Judge to hear and receive evidence. It was for the appellant to establish that his college was a highly trusted sponsor at the date of application, and it had lost its status thereafter, and that he had not been advised and was not aware of this change. There was however no evidence to support that position.
18. Mr Tufan also referred to the appellant's very recent witness statement dated 2nd July 2014. He referred at paragraph 8 to the Home Office's register of Tier 4 colleges, which he asserts is amended on a daily basis with no archived lists available. He stated that he has "inquired from the college" and has been assured that the college had a Highly Trusted sponsor licence when it issued the CAS.
19. However, apart from that assertion, Mr Tufan submitted that no attempt had been made by the appellant either at the date of the hearing before the First-tier Tribunal or even now to produce clear evidence from the college. Accordingly, the appellant has again simply asserted that the college was a Highly Trusted sponsor. It is not disputed that it was for the appellant to establish on the balance of probabilities that on the date of application the college in question was a Highly Trusted sponsor.
20. Mr Tufan submitted that the appellant does not dispute that he had not submitted or adduced evidence at the date that the application was made, in respect of the status of the college. In any event, the appellant has still not produced evidence such as a letter or a written statement from the college that the college did have the necessary status at the date that the appellant's application was made.

Assessment

21. As noted by the First-tier Tribunal Judge, it was for the appellant to establish that his college had been a Highly Trusted sponsor at the date of the application. The Judge considered the evidence presented in that respect and found that the appellant had not established his sponsor's status as at the date of application. That was a finding available to the Judge on the basis of the documents and evidence before him.
22. Decisions such as **Thakur** did not assist him as he has not produced evidence as to what the status of the college was at the appeal, or indeed since.

Decision

The decision of the First-tier Tribunal Judge did not involve the making of an error on a point of law and shall stand.

No anonymity order made.

Signed

Dated: 17/7/2014

Deputy Upper Tribunal Judge Mailer