



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

Appeal Number: IA/09186/2014

THE IMMIGRATION ACTS

Heard at Field House

On 15 December 2014

**Determination
Promulgated**

On 22 December 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**MR SAGAR GIRISHBHAI THANKI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr Esen Tufan, Specialist Appeals Team

DETERMINATION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Duff sitting at North Shields on 22 April 2014) dismissing on the papers his appeal against the decision by the Secretary of State to refuse to grant him leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant, and his appeal against the Secretary of State's concomitant decision to make directions for his removal under Section 47 of the Immigration, Asylum and Nationality Act 2006. The First-tier Tribunal did not make an anonymity direction, and I do not consider

that such a direction is required for these proceedings in the Upper Tribunal.

2. The appellant is a national of India, whose date of birth is 12 December 1989. He first arrived in the United Kingdom on 8 October 2010 in possession of a student visa which conferred upon him leave to enter until 30 March 2012. He was granted leave to remain as a student from 17 October 2012 until 23 August 2013.
3. The appellant applied for an extension of stay as a student, just before his current student leave expired. He wished to follow a diploma in health care management at Vista Business College in Hounslow from 16 September 2013 until 12 February 2015.
4. According to Home Office records, on 7 October 2013 UK Border Agency decided to revoke the licence of Vista Business College. Again, according to Home Office records, on 21 November 2013 the Home Office sent a letter dated 21 November 2013 to the appellant at the address in London E7 given on his application form. He was informed of the decision to revoke the licence of Vista Business College on 7 October 2013, which meant that the CAS that he submitted with his outstanding application was no longer valid. But before a final decision was made, the Home Office had suspended consideration of his application for a period of 60 calendar days. During the 60-day period, it was open to him to withdraw his application or submit a fresh application in a different category or to leave the United Kingdom. Enclosed with the letter was a certified copy of his passport. If he decided to obtain a new CAS, then his sponsor would need to see and retain this copy.
5. On 3 February 2014 the Secretary of State gave her reasons for refusing the application. The Tier 4 sponsor register had been checked on 27 January 2014, but Vista Business College was not listed as of that date. This was also the case on 3 February 2014. On 21 November 2013 he had been informed of the revocation of the licence of Vista Business College, and he had been allowed 60 days to obtain a new sponsor and CAS. But he had not provided a new CAS within that 60-day period.
6. The appellant appealed to the First-tier Tribunal on the ground that he had not received any letter from the Home Office giving him 60 days to submit a new CAS.
7. The appellant's appeal came before Judge Duff to be determined on the papers, as the appellant had requested. In his subsequent determination, Judge Duff said there had been no unfairness to the appellant. For even if he did not receive an original letter dated 21 November 2013 giving him 60 days to obtain a new sponsor and CAS, it was clear that he had ample opportunity since he received the refusal letter to obtain a new sponsor and CAS, and he had failed to do so. The refusal letter was dated 3 February 2014 and in the grounds of appeal the appellant stated he received it on 5 February 2014. The case had been listed for hearing on

22 April 2014 and the appellant had filed no evidence to suggest that, even now, he had found a new sponsor and CAS. This was a period of over 60 days since receipt of the refusal letter. Had the appellant filed any such evidence, he would have considered it proper to take it into account, on the basis of common law fairness. But as no such evidence had been filed, it was clear that the appellant had failed to demonstrate that he satisfied the requirements of the Rules, and accordingly the case must be dismissed.

The Eventual Grant of Permission to Appeal to the Upper Tribunal

8. Permission to appeal was initially refused, but on a renewed application to the Upper Tribunal permission was granted on 3 November 2014 by Judge Kekic for the following reasons:

Although the grounds cover eleven pages, they essentially make just two points: that the respondent withdrew the sponsor's licence but the appellant did not receive the letter from the Secretary of State giving him 60 days to find another sponsor and that the judge's approach to the matter of the letter and the 60-day policy was flawed.

In the absence of any evidence from the respondent of the letter sent to the appellant with regard to the 60 days granted to enable him to find another sponsor, it is arguable that the judge erred in his approach.

The Hearing in the Upper Tribunal

9. At the hearing before me, Mr Tufan produced the letter dated 21 November 2013 referred to in the refusal letter. The letter was addressed to the appellant at the address which he had given in his application form, and it is the same address as that used by the Home Office to communicate the letter of refusal to the appellant in February 2014.
10. Mr Tufan also produced a print-out from the Home Office electronic database showing that on 21 November 2013 an entry was made on the database with respect to the appellant. His case did not fall for refusal but would fall for curtailment as his application was in time. All the documents had been photocopied and originals returned to the appellant. The passport and BRP had been photocopied, and originals kept on file. ICD4499 and 4500 had been produced and sent to the applicant at the address given for him in the application.

Discussion

11. Judge Duff's treatment of the common law unfairness claim is arguably inadequate. As argued in the grounds of appeal to the Upper Tribunal, the absence of a Patel permission letter would make it very difficult, if not impossible, for the appellant to obtain a new CAS and a new sponsor. So the failure by the appellant to file evidence of a successful attempt to find a new CAS and new sponsor between the date of decision and the date of the hearing was not something which could weigh against him.

12. However I do not consider that a material error of law is made out. The burden at all material times rested with the appellant to prove his case on common law unfairness, and he did not seek to discharge this burden. It was not enough for him merely to assert by way of appeal that he had not received the permission letter. It was incumbent on him to file evidence which sustained this assertion. Not only did the appellant not file any evidence on this discrete issue, but the appellant also did not file any evidence to show that he had at all material times been ignorant of the fact that the college had had its licence revoked, and he had thereby been deprived of the opportunity of requesting a permission letter before the Secretary of State made a decision on his application.
13. It was not part of the appellant's case by way of appeal that he was not aware of the revocation of the college's licence on 7 October 2013. He thus had ample time before the ultimate refusal decision to request a permission letter from the Home Office to enable him to find a new sponsor and obtain a new CAS. If he knew about the revocation of the college's licence, he had no excuse for sitting on his hands until the inevitable refusal of his pending application. Thus, even if it were true that he had not received the permission letter sent in November 2013, it did not follow that the subsequent refusal decision of the Secretary of State was not in accordance with the law.

Decision

The decision of the First-tier Tribunal dismissing the appellant's claim on common unfairness grounds (as well as under the Rules) did not contain an error of law, and the decision stands. This appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal did not make an anonymity direction.

Signed

Date **15 December 2014**

Deputy Upper Tribunal Judge Monson