



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

**Appeal Numbers: IA/11300/2014
IA/11309/2014
IA/11315/2014
IA/11319/2014**

THE IMMIGRATION ACTS

Heard at Field House, London

**Determination
Promulgated**

On 24 September 2014

On 3 November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**AHTASHAM AZHAR
SADAF AHTASHAM
MUHAMMAD TALHA
FATIMA AHTASHAM**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Azhar - the first appellant in person

For the Respondent: Ms A Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants, nationals of Pakistan, appealed to the First-tier Tribunal against the decision of the respondent to refuse the first appellant's application for leave to remain as a Tier 4 (General) Student migrant and the applications of the second, third and fourth appellants (his wife and two children) for leave to remain as his dependants. First-tier Tribunal Judge Ford dismissed the appeal and the appellants now appeal with permission to this Tribunal.

2. The background to this appeal as accepted by the First-tier Tribunal Judge is that the first appellant applied for leave to remain on 21 February 2013 and the respondent wrote to him on 9 June 2013 to tell him that his College's licence had been revoked and that the CAS was therefore no longer valid. He was given a period of 60 days to submit a fresh CAS in line with the Respondent's policy. Within the 60 days the appellant submitted a fresh CAS but on 9 December 2013 the respondent wrote to the appellant informing him that the new sponsor also had its licence revoked and giving him a further 60 days to find a another sponsor. The Judge accepted that this letter was sent by the respondent to the appellant's previous address which had been vacated on 31 July 2013. The Judge accepted that the appellant had informed the respondent of this new address in the application form dated 24 August 2013 submitted with the second CAS. However the Judge found that the respondent also sent this letter to the appellant's then representatives who did not pass it on to the appellants until 3 February 2014 after the appellants had paid their outstanding fees. The Judge considered that this was unprofessional on the part of the solicitors who should have informed the appellants about the respondent's correspondence. The effect was that the appellants only had four days in which to identify a new sponsor and secure a new CAS. The first appellant managed to do so but did not submit an up-to-date bank statement and the application was refused because the bank statement previously submitted was, by then, out-of-date by more than the requisite 28 days.
3. The Judge dismissed the appeal because she was prevented (by section 85A of the Nationality, Immigration and Asylum Act 2002) from taking account of the up-to-date bank statements submitted at the appeal. The Judge decided that Article 8 was not engaged as the appellant had not demonstrated that there were any exceptional or compassionate circumstances in the case.
4. The grounds of appeal to the Upper Tribunal contend that the Judge failed to give adequate reasons for concluding that there were exceptional circumstances in this case. Permission was granted on the basis that those grounds of appeal were arguable.
5. The appellant submitted a witness statement in advance of the hearing before me. In that he raised the issue of fairness given that the letter of 9 December 2013 was not served on his correct address and that the representatives to whom the letter was sent were no longer acting for him at that time. As this issue had not been raised in the grounds of appeal and the appellant was unrepresented before me I gave him the opportunity to amend the grounds of appeal and he sought permission to do so. Ms Everett had no objection and I granted permission to amend the grounds of appeal accordingly.
6. I was satisfied on the basis of the appellant's witness statement and the copy application form before me that the respondent had been informed of the appellant's new address with the fresh application in August 2013. Contrary to the appellant's witness statement it seems that at that time he was represented by his then representatives although I accept that the relationship subsequently broke down. The failure of the respondent to serve the 9 December 2013 letter on the appellant at the address he had put on

the application form therefore resulted in unfairness to him. In failing to serve the notification to the appellant at his correct address the respondent failed to follow her own policy designed to address the unfairness of the situation where a sponsor's licence is revoked. The failure to properly apply her policy rendered the respondent's decision not in accordance with the law. The Judge erred in failing to consider this ground of appeal. Whilst the appellant may not have properly articulated this in this way, he was unrepresented in the First-tier Tribunal and I am satisfied that the Judge was on notice of this issue and that it was an obvious point.

7. In these circumstances I therefore set the First-tier Tribunal Judge's decision aside and remake it by allowing it to the extent that the decision is not in accordance with the law and the decision remains outstanding before the Secretary of State.

Conclusion:

The making of the decision of the First-tier Tribunal did involve the making of an error on point of law.

I set aside the decision.

I re-make the decision in the appeal by allowing it to the extent that it remains outstanding before the Secretary of State.

Signed
2014

Date: 31 October

A Grimes

Deputy Judge of the Upper Tribunal