



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: IA/12825/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8th December 2014**

**Determination
Promulgated
On 19th December
2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**AMMAD WAKIL
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Adophy of Rana and Co Solicitors

For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction and Background

1. The Appellant appeals against a determination of Judge of the First-tier Tribunal Eldridge promulgated on 27th June 2014.
2. The Appellant is a male citizen of Pakistan born 1st January 1990 who on 4th April 2013 applied for further leave to remain in the

United Kingdom as a Tier 4 (General) Student under the Points-Based System (PBS).

3. The application was refused on 24th February 2014 with reference to paragraph 245ZX(c) and (d). The Appellant was not awarded any points under Appendix A as he had not submitted a valid Confirmation of Acceptance for Studies (CAS), nor was he awarded any points under Appendix C in relation to maintenance, as because he had not provided a valid CAS, the Respondent had been unable to assess his course fees or monthly maintenance requirements.
4. The appeal was listed for hearing on 2nd June 2014. The Appellant did not attend. Judge Eldridge (the judge) determined the appeal in the Appellant's absence and the appeal was dismissed.
5. The Appellant applied for permission to appeal to the Upper Tribunal and I set out below a summary of the grounds;
 - (i) The judge erred at paragraph 14 by failing to consider that the Appellant had made a further application for leave to remain on 14th February 2014 which was still pending with the Respondent. This had been mentioned in the Appellant's witness statement but was not considered. The judge failed to consider the biometric letter in the Appellant's bundle.
 - (ii) The judge erred at paragraph 16 in finding that the Appellant could not show that he had a Sponsor and had failed to take into account an offer letter issued by Ace College of IT and Management which letter was sent with the fresh application for leave to remain made on 14th February 2014.
 - (iii) The judge erred by failing to consider that the Appellant had written to the Respondent requesting his passport so that he could sit an English Language Test again as his previous certificate had expired.
 - (iv) The judge erred by giving inadequate reasons for his findings.
 - (v) The judge erred by either misconstruing facts or failing to consider properly or at all the evidence.
 - (vi) The judge erred by not taking into account that the Appellant had an ACCA exam on the date of the hearing and his request for an adjournment had been refused. If he had been given the opportunity to attend the hearing he could have explained the circumstances and merits of his case.
6. Permission to appeal was granted by Judge of the First-tier Tribunal Osborne and I set out below paragraphs 3 and 4 of the grant of permission;

- “3. In an otherwise focused determination in which the judge engaged with the evidence which was before him, it is nonetheless arguable that the judge failed to appropriately consider the evidence that was not before him but notice of which had been given by the Appellant. The judge failed to refer to the fact that a further application had been made on 14th February 2014 and also failed to refer to the fact that the Appellant had requested the return of his passport in order to arrange an IELTS test. This information was arguably before the judge and so arguably should have been taken into account and further arguably should have been referred to in the determination. The fact that the evidence was arguably not considered amounts to an arguable error of law.
4. As this arguable error of law has been identified, all the issues raised in the grounds are arguable.”
7. The Tribunal issued directions that there should be a hearing before the Upper Tribunal to decide whether the First-tier Tribunal determination should be set aside.

The Appellant’s Submissions

8. Mr Adophy commenced his submissions by contending that an adjournment should have been granted when requested on behalf of the Appellant.
9. Mr Adophy, in contending that the First-tier Tribunal determination contained errors of law set out a chronology. On 4th April 2013 the Appellant had made an in time application for further leave to remain to study at Islington College. On 17th December 2013 the Respondent wrote to the Appellant advising that the Sponsor licence of Islington College had been revoked, and consideration of the Appellant’s application would be suspended for a period of 60 calendar days to enable him to submit a fresh application. The 60 day period ended on 15th February 2014.
10. Mr Adophy contended that a fresh application for leave to remain had in fact been made on 14th February 2014 although it was accepted that at that time the Appellant did not have a new CAS or the appropriate English language test, and he could not undertake such a test because the Respondent held his passport.
11. Mr Adophy submitted that the judge had erred by not taking into account the fact that this new application had been made, nor had the judge taken into account that the Appellant had requested his passport from the Respondent but had not received it so could not undertake the English test. It was therefore submitted that the judge had erred in law by not acting fairly.
12. I made the point to Mr Adophy that the Tribunal file did not confirm that evidence had been submitted to prove that a fresh

application had been made on 14th February 2014, and that this evidence appeared only to have been submitted with the application for permission to appeal to the Upper Tribunal on 4th July 2014. I invited Mr Adophy to consider this while I heard from Mr Nath, and he could then advise me as to whether there was any evidence to prove that the First-tier Tribunal had been notified of the further application made by the Appellant.

The Respondent's Submissions

13. Mr Nath submitted that the determination disclosed no error of law. Following the revocation of the licence held by Islington College, the Appellant had failed to submit a new CAS within 60 days of 17th December 2013 and the judge had therefore correctly dismissed the appeal.

The Appellant's Response

14. Mr Adophy stated that the further application made on 14th February 2014 was referred to in the Respondent's refusal dated 5th November 2014. This refusal was clearly not before the First-tier Tribunal in June 2014, and was not on the Tribunal file. Mr Adophy produced a copy which confirmed that there had been an application made on 14th February 2014 and refused because there was no CAS submitted with the application.
15. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

16. I will firstly consider the sixth point made in the grounds contained within the application for permission to appeal, which relates to refusal of an adjournment application.
17. It is clear that there was no application made to the judge for an adjournment as the application had been made in writing on 12th May 2014, and refused in abrupt terms by a judge other than Judge Eldridge on 15th May 2014.
18. The solicitors who made the application did not make a further application following refusal, but wrote to the Tribunal on 31st May 2014 indicating that they had tried to obtain further instructions from the Appellant without success, and therefore they would not be attending the hearing which they acknowledged was on 2nd June 2014 and requesting that they be removed from the record.
19. The appeal was listed as a float case on 2nd June 2014 and there was no attendance by or on behalf of the Appellant. There was no further explanation for the non-attendance and no further application for an adjournment. I have considered the refusal of the adjournment request made on 12th May 2014 in the light of the

principles set out in Nwaigwe (Adjournment - Fairness) [2014] UKUT 00418 (IAC). The test to be applied is one of fairness, and whether there was any deprivation of the Appellant's rights to a fair hearing. I do not find any error of law although the refusal decision was inappropriately worded. An adjournment could not have assisted the Appellant as he had not submitted a further CAS within the 60 day period. The Respondent's letter dated 17th December 2013 was clear in stating that the 60 day period would end on 15th February 2014 and there would be no further extensions beyond that date, and that if a new valid CAS was not submitted within that 60 day period, then the application would be considered on the basis of the information currently available and would be refused. As the Appellant accepted that he had not submitted a further CAS within the 60 day period, an adjournment would not have assisted his case.

20. I will then consider the grounds as set out in the application for permission to appeal.
21. Dealing with the first ground, I find no error of law. It is contended that the Appellant mentioned as a material fact in his witness statement, that he had made a further application for leave to remain on 14th February 2014. I can find no reference in the witness statement to the Appellant stating that he had made a fresh claim on 14th February 2014. The witness statement dated 18th April 2014 confirms that the Appellant has been unable to obtain a new CAS because his English certificate had expired and he needed to take a new English language test.
22. There is reference to a biometric letter from the Respondent in the Appellant's bundle, and the letter is dated 6th March 2014, but that letter gives no information regarding a new application.
23. The Grounds of Appeal to the First-tier Tribunal at paragraphs 9 and 14 make reference to the Appellant submitting a fresh application before the expiry of the 60 days from 17th December 2013, but provided no evidence that such an application had been made. The grounds confirm that the Appellant did not have either a new CAS or an up-to-date English language certificate, and therefore even if a new application had been made before the 60 days expired, it could not have succeeded.
24. I find that there was no satisfactory evidence before the judge, of a new application having been made on 14th February 2014, and that the first time that such evidence was produced to the Tribunal, was a fax dated 4th July 2014, when an application for permission to appeal to the Upper Tribunal was made.
25. The Appellant's bundle which was before the First-tier Tribunal did not contain the application made on 14th February 2014 but did

contain a letter dated 14th February 2014 from the Appellant to the Respondent but this letter requested an extension of time to enable the Appellant to undertake an English language test, and to obtain a new CAS.

26. The second Ground of Appeal submits that the judge erred at paragraph 16 by making a finding that the Appellant could not find a new Sponsor and did not take into account an offer letter issued by Ace College of IT and Management. I am satisfied that this ground discloses no error of law and that the letter from Ace College dated 14th February 2014 was not before the judge. As with the application for further leave to remain made on 14th February 2014, I find that the first time that this document was presented to the Tribunal was on 4th July 2014 with the application for permission to appeal to the Upper Tribunal.
27. In any event the letter from Ace College is a conditional offer, and is therefore not a CAS, and specifically states that in order to obtain an unconditional offer the Appellant would need to submit an English language test equivalent to CEFR level B2.
28. The third ground contained within the application for permission to appeal refers to the judge not taking into account that the Appellant had written to the Respondent requesting his passport. The only evidence of this was the letter referred to above dated 14th February 2014, which was written one day before the 60 day period expired on 15th February 2014. I do not find this is of relevance, save to confirm to the judge that with one day before the expiry of the 60 day deadline, the Appellant did not have a CAS nor an English language test certificate.
29. The fourth Ground of Appeal relates to adequacy of reasoning. The Upper Tribunal made it clear in Budhathoki that a judge did not have to rehearse every detail or issue raised in a case, but a judge must identify and resolve any key conflicts in evidence, and explain in clear and brief terms their reasons, so that parties could understand why they have won or lost. I find no error of law is disclosed by this ground. The judge considered all relevant evidence before him, made findings which were open to him on the evidence, and gave sustainable and adequate reasons.
30. The fifth Ground of Appeal makes reference to the Tribunal misconstruing the facts, or failing to consider properly or at all the evidence tendered. Some of the evidence relied upon by the Appellant in making the application for permission to appeal was not before the First-tier Tribunal. The judge considered all the evidence that was before him and I find no indication that any facts were misconstrued or that evidence was not properly considered.

Decision

The determination of the First-tier Tribunal discloses no error of law.

I do not set aside the decision which stands and the appeal is dismissed.

Anonymity

No order for anonymity was made by the First-tier Tribunal. There has been no request for anonymity to the Upper Tribunal, and no anonymity order is made.

Signed
2014

Date 10th December

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT
FEE AWARD

The appeal is dismissed. There is no fee award.

Signed
2014

Date 10th December

Deputy Upper Tribunal Judge M A Hall