



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

Appeal Number: IA/52627/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 24 July 2014**

**Determination
Promulgated
On 8 August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AHMED UL BARI

Respondent

Representation:

For the Appellant: Mr B Ali, Counsel, instructed by Morgan Mark Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant was the respondent before the First-tier Tribunal and for convenience I refer to the parties as they were known at the First-tier.
2. The Respondent appeals with permission a decision of Judge of the First-tier Tribunal Hanley promulgated on 2nd May 2014 in which the judge

allowed the Appellant's appeal against the refusal of his Tier 4 (General) Student application. The refusal was made on the grounds that the Appellant had failed to abide by a condition attached to his leave, namely that he only had permission to study with a particular Sponsor, and that in the event that he changed Sponsor he required prior permission.

3. The Respondent found that the Appellant had changed his Sponsor without prior permission and, deciding not to exercise discretion in the Appellant's favour, refused his application under the general grounds out at paragraph 322(3) of HC 395 as amended, otherwise the Immigration Rules.
4. Permission to appeal was granted on the ground that the judge had made a material misdirection of law when he found that it was not established that the grant of entry clearance imposed a condition restricting the Appellant to study at a particular institution.
5. I referred the parties to the persuasive judgement in the case of **Astle R (on the application of) v Secretary of State for the Home Department [2014] EWHC 2215 (Admin)** in which a Deputy Judge of the High Court, Mr Robin Purchase QC, considered the issue and concluded that the Immigration Rules themselves imposed such a condition and further that the condition required no further administrative action to operate. In that case the judge found that the Respondent had attached the conditions to leave by virtue to the reference in the vignette, both to the Immigration Rules under which the grant had been given i.e. the Tier 4 (General) Student heading, but also the inclusion of the Sponsor's reference number as provided by the Sponsor to the Appellant on the CAS, and then by the Appellant to the Respondent in his application form, when he gave details of his Sponsor. The judge also found that in any event the rules operated to impose the condition as a matter of law. This case is s on all fours with the facts of that case, not only because of the operation of law, but also because of the factual position revealed by the vignette. I am satisfied for the same reasons that the condition asserted by the Respondent operated in this case, and that the judge was in material error in finding that it had not been established that it did.
6. The position under the rules is that even if the condition was breached there was discretion to exercise and so I have gone on to consider whether the First-tier Tribunal decision, made in the alternative, reveals any error. Mr Tufan before me has properly accepted that if the decision in the alternative is correct, then any error in respect of the issue of the imposition of the condition is not material. The judge correctly identifies that paragraph 322(3) is a discretionary ground of refusal and correctly self directs. The grounds assert that the Respondent, having exercised discretion, the judge's contrary decision has been inadequately reasoned. The reasoning follows the consideration of the factual matrix of this case and is set out at paragraph 19.
7. I note that there was no issue as to the facts, the Appellant did not give evidence, it having been indicated by the Respondent's representative on

the day that there was no cross-examination required. The judge, it is clear from a complete reading of his decision, accepted the Appellant's unchallenged evidence that he did not know that there was a condition requiring him to make an application, or to notify, a change of Sponsor. It is right therefore that this was an Appellant who was treated as being a genuine student, who made a bona fide application and who has acted, albeit mistakenly in good faith. The judge notes that the Appellant meets all the requirements of the rules for leave to remain as a student apart from the failure to follow the condition, and of course he would not be considering the exercise of discretion if that was not the pre-existing factual basis. The judge noted the financial investment made by the Appellant in his studies and took account of the stage that he had reached in connection with those studies. He also took account of the time that had passed since the breach of condition, which he notes was some two years prior.

8. The judge was also concerned about the difficulties as they seemed apparent to him, in how an Appellant or a student might obtain a permission to switch Sponsor. In that regard I find that that is a matter which could not carry any significant weight as in the particular context of this case the Appellant has never asserted that he had difficulties in knowing how to switch Sponsors. His case has always been that he made no such attempt because he did not understand that it was required.
9. However, looking at the reasons in the round, I am satisfied that the judge has given ample explanation and given sustainable reasons as to why he found the exercise of discretion should fall in favour of the Appellant.
10. Mr Tufan briefly submitted that the judge's finding that the Appellant's failure had occurred two years prior and that the question of the absence of clarity was not sufficient to find that discretion ought to be exercised in favour of the Appellant. However it will be clear from my consideration of the judge's decision that I am satisfied that the judge took far more than that into account and that when read in the round the reasoning is adequate to explain to the Respondent as to why it was that the judge took a different view in respect of the exercise of discretion and that the reasons that he has provided are sufficiently cogent to justify the decision that he has made.

Signed

Date

Deputy Upper Tribunal Judge Davidge