



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

Appeal Number: IA/04051/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 14 April 2015**

**Determination  
Promulgated  
On 5 May 2015**

**Before**

**LORD BANNATYNE  
UPPER TRIBUNAL JUDGE ALLEN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**EVELYN TENOLETE FERMIN  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr Clarke, Home Office Presenting Officer

For the Respondent: Mr H Shamsazzoha

**DETERMINATION AND REASONS**

**Background**

1. The appeal before us was on behalf of the Secretary of State for the Home Department (hereinafter referred to as “the Secretary of State”). The respondent is hereinafter referred to as “the applicant”.
2. The appeal by the Secretary of State was made against a decision of the First-tier Tribunal dated 11 November 2014.

**Background**

3. The applicant is a national of the Philippines where she was born on 10 March 1977. She entered the United Kingdom on 13 October 2010 with leave as a student. The leave was extended on 2 August 2011 until 2 October 2013. By way of a Tier 4 (General) application form dated 19 December 2013 the applicant applied for further leave to continue her studies.
4. On 31 December 2013 the application was refused and a decision was made to remove the applicant to the Philippines by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006.
5. The Secretary of State's reasons for refusal were set out in a letter dated 31 December 2013 and were these: the applicant had claimed 30 points under Appendix A of the Immigration Rules for a valid confirmation of acceptance for studies (CAS) but in fact no CAS reference number had been submitted with the application. As the necessary points could not be awarded in consequence she could not be awarded points for maintenance. She could not therefore satisfy the requirements of the Immigration Rules for this PBS category and the application was refused under paragraph 245XZ(c) with reference to paragraph 115A of Appendix A and paragraph 245XZ(d) of the Immigration Rules.
6. By notice of appeal dated 15 January 2014, the applicant contended that the decision was not in accordance with the law and the Immigration Rules and asserted that her application met all the requirements. This also contended on her behalf that the Secretary of State had not applied common law fairness to the decision given the circumstances prevailing at the time. The decision therefore was unlawful given its impact on the appellant's Article 8 European Convention on Human Rights (ECHR) rights.

### **The Proceedings before the First-tier Tribunal**

7. In the proceedings before the First-tier Tribunal the evidence and submissions were directed to a very narrow issue, namely: the applicant's failure to provide a valid CAS at the time of the application or, more precisely, within 60 days of a letter dated 18 October 2013 which was contended by the Secretary of State had notified the applicant of the invalidity of her CAS. The foregoing was the sole basis for the Secretary of State's refusal.
8. The First-tier Tribunal found on this narrow issue as follows: there had been no such notification to the applicant. On the basis of this finding the First-tier Tribunal went on to say this at paragraph 17 of its determination:  
  
"Given the Appellant meets all the other criteria of the Rules and now has a valid CAS I allow the appeal".

### **Procedure following upon the First-tier's decision**

9. The Secretary of State sought leave to appeal against this decision on two grounds.

The first of these grounds was this: The First-tier Tribunal found that the applicant did not receive the letter from the Secretary of State of 18 October 2013. It was asserted that this finding failed to take into account the following factors:

- “a) The Appellant was still in contact with the college through until late 2013, indeed she attended the college in the ‘Christmas week’ ... to try and find out what was happening with the college licence.
- b) the Appellant was sent with the letter in October 2013 the valuable documents submitted with the application, including for instance her endorsed passport. Presumably this passport was used in order to sit the English language test ... required by her new college, therefore she would have received the letter from the SSHD when the passport was returned [sic]”.

On the basis of the above it was asserted that the findings of the First-tier Tribunal failed to take into account material matters in determining whether the applicant did in fact receive the letter.

The second ground of appeal was this:

In any event, the First-tier Tribunal allowed the appeal under the Immigration Rules, and this was an outcome which it could not properly come to. In elaboration of this ground it was argued that the applicant did not have a valid CAS at the date of the application or decision. The CAS in existence now, having been issued sometime in January 2014 post-dated that of the decision of 31 December 2013. Accordingly it was argued that the only outcome on the findings made was that the decision was otherwise not in accordance with the law.

10. Permission to appeal was refused on the first ground and granted on the second ground.

### **At the hearing before this Tribunal**

11. At the outset of the hearing Mr Clarke on behalf of the Secretary of State made an oral motion seeking leave to amend the grounds of appeal by seeking to add a further ground of appeal to this effect: that the First-tier Tribunal had failed to take into account all material matters in that it had failed to take account of the answer given by the applicant to question F2 in the Tier 4 (General) application form which was in the following terms:

“Please explain how you lost your passport:

Have been retained by the Home Office and given 60 days to reapply. Please see attached.”

12. This motion was opposed on behalf of the applicant on the basis that it came too late.

13. We refused the motion. We were clearly of the view that this motion came too late. The applicant's representative had had no previous intimation of this motion. He first became aware of it on the morning of the hearing before us. There were clearly difficulties in his seeking to answer this point where he had been given no notice that it was to be raised. Moreover, we were unable to identify any good reasons why this ground of appeal had not been raised at an earlier stage. In particular we could not see why, when leave to appeal was sought, this matter had not been raised. Given the foregoing we could see no basis upon which we could properly grant Mr Clarke's motion.

14. With respect to the second ground of appeal the applicant's legal representative accepted that the applicant did not have a valid CAS as at the date of the decision. Beyond that he accepted that it followed that the First-tier Tribunal had erred in law in allowing the appeal. It was his position that given the findings made by the First-tier Tribunal the appropriate course would have been to find that the Secretary of State's decision was not in accordance with the law and thereafter to remit to the Secretary of State for further consideration.

15. We agree that the second ground of appeal is well-founded.

**Decision**

16. For the foregoing reasons we allow the appeal and remit the matter to the Secretary of State for further consideration.

17. We make no anonymity direction.

Signed

Date

Lord Bannantyne  
Sitting as a Judge of the Upper Tribunal