IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/06283/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 16th January 2015	**On 29th January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR MD. ABDUS SOBHAN SUJEL

Respondent

Representation:
For the Appellant: Mr L Tarlow, Senior Home Office Presenting Officer
For the Respondent: No representation, no appearance

DECISION AND REASONS

1. On or about 27th November 2013 Mr Sujel made a combined application for leave to remain in the United Kingdom as a Tier 4 (General) Student and for a biometric residence permit. On 17th January 2014 a decision was made to refuse the application on the basis that no valid Confirmation of Acceptance for Studies was produced. The decision was appealed and the matter came before Judge of the First-tier Tribunal Cameron on 15th September 2014 sitting at Taylor House.

2. On the Secretary of State's case there was no valid Confirmation of Acceptance for Studies ("CAS") assigned to the Appellant at the time when

a check was done on 17th January 2014. However, evidence was received by the First-tier Tribunal to the effect that a CAS was sent on that same date by recorded delivery to the Secretary of State, in respect of a "CAS" issued on 10th January 2014.

3. On the basis that Mr Sujel had a valid CAS assigned to him the judge allowed the appeal.

4. Not content with that decision, by Notice dated 10th October 2014 the Secretary of State made application for permission to appeal to the Upper Tribunal. The grounds submit as follows:

> *"1. The First-tier Tribunal Judge errs in concluding that the Appellant can satisfy the requirements of the Rules by relying on a CAS issued to him on 10th January 2014.*
>
> *.2 The Appellant submitted his application on 27th November 2013.*
>
> *.3 Paragraph 116(a) of Appendix A states:*
>
> > *'116. A Confirmation of Acceptance for Studies will only be considered to be valid if:*
> >
> > *(a) it was* ***issued no more than six months before the application is made…'*** (emphasis added)
>
> *4. The Respondent asserts that the CAS must be issued before the application is raised.*
>
> *5. The Appellant seeks to rely on the CAS which was issued over six weeks after the application was submitted. On this basis the CAS is not valid in accordance with Appendix A.*
>
> *6. The First-tier Tribunal Judge should have dismissed the appeal on this basis.*
>
> *7. Permission to appeal is respectfully sought."*

5. On 28th November 2014 Judge of the First-tier Tribunal Levin granted permission and thus the matter comes before me.

6. It was of course open to the Respondent, Mr Sujel to attend and make representations or indeed to submit representations either by way of 'Rule 24 Notice' or otherwise. As it was this matter was called on at about 11:10am. Mr Sujel did not attend. Service of the Notice of Hearing was upon the Appellant at his last known address. Whilst his previous solicitors had advised the Tribunal that they were no longer acting no other address for Mr Sujel was provided.

7. As it is there simply is no answer to the point of law that is taken by the Secretary of State. Insofar as fairness falls to be considered I am reminded

of what was said by Sales LJ in the case of **EK (Ivory Cost) –v- Secretary of State for the Home Department [2014] EWCA Civ 1517** at paragraph 28:

> *"The PBS is intended to simplify the procedure for applying for leave to enter or remain in the United Kingdom in certain classes of case, such as economic migrants and students. This is to enable the Secretary of State to process high volumes of applications in a fair and reasonably expeditious manner, according to clear objective criteria. This is in the interests of all applicants. It also assists applicants to know what evidence they have to submit in support of an application."*

8. Put simply there was a Rule that had certain requirements and Mr Sujel did not meet them. It was open to the Secretary of State to refuse the application. She did so. The point taken therefore by the Secretary of State is correct. The judge materially erred in law and it falls for me to remake the decision of the First-tier Tribunal.

The re-making

9. There is as I have already said no answer to the point of law. Mr Sujel did not meet the requirements. No sufficient basis is advanced before me as to why the appeal in the First-tier Tribunal should be allowed. In those circumstances the appeal falls to be dismissed. I pause only to observe that the arguments advanced on behalf of Mr Sujel in the First-tier Tribunal set out in their letter of 27th November 2013 but sent to the Secretary of State makes reference to the case of **Rodriguez (flexibility policy) [2013] UKUT 00042.** However by the time this matter came before the First-tier Tribunal was no longer good law: **Secretary of State for the Home Department v Rodriguez [2014] EWCA Civ 2**.

10. Although Mr Sujel raised the issue of human rights in his grounds of appeal to the First-tier Tribunal no sufficient evidence was pointed to by or on behalf of Mr Sujel. He makes reference at one time to having been ill and to having expended considerable money in pursuit of his education in the United Kingdom. I remind myself however that the right to education is generally regarded as a weak right and that having regard to s. 117B of the Nationality, Immigration and Asylum Act 2002 there is in reality little that would favour a favourable outcome for this Appellant

Decision

11. The decision of the First-tier Tribunal contained a material error of law and is set aside. The decision of the First-tier Tribunal is re-made such that the appeal of the First-tier Tribunal is dismissed.

Signed **Date 29th January 2015**

Deputy Upper Tribunal Judge Zucker