



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

Appeal Number: IA/15513/2014
IA/15517/2014
IA/15518/2014
IA/15519/2014

THE IMMIGRATION ACTS

**Heard at Columbus House,
Newport
On 4 November 2015**

**Decision and Reasons
promulgated
On 6 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

**HARSHANI NISHANI PATHIRANA WIJETUNGE JAYAWARDANAGE
JANAKA SUMITH KUMARA WIJENDRA ARCHARIYAGE
MALKI BHAGYA WIJENDRA ARCHARIGE
MALITH MIRANGA WIJENDRA ARCHARIGE**
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr R Davies, Counsel instructed by VMD Solicitors

For the Respondent: Mr I Richards, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Knowles in which he dismissed the appeal of the Appellants, citizens of Sri Lanka, against the Secretary of State's decision to refuse to vary leave to remain. This appeal is not subject to an anonymity order by the First-tier Tribunal and neither party invited me to make such an order.
2. The Appellants came to the United Kingdom on 10 October 2010, the First Appellant was granted leave to enter as a Tier 4 (General) Student and the Second, Third and Fourth Appellants were granted leave as her dependent spouse and children. On 28 January 2014 the Appellants made in time applications to vary leave to remain. These applications were refused on 14 March 2014 by reference to paragraphs 245ZX, 319C and 319H of the Immigration Rules. The Appellants exercised their right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Knowles on 24 October 2014 and was dismissed. The Appellants applied for permission to appeal to the Upper Tribunal. The application was granted by Upper Tribunal Judge Grubb on 1 April 2015 in the following terms

"It is arguable that the Judge failed to apply the relevant provision in the Tier 4 Guidance under the rubric "If your Tier 4 sponsor becomes a legacy sponsor ... Before you make an application to the Home Office" (version 08/2014, page 65 of 79). That appears to recognise that a CAS will remain valid and can be used despite the downgrading of the sponsor. The Judge applied a subsequent part of the Guidance (page 66 of 79) which dealt with the situation where an application had already been made prior to the downgrading, which was not applicable to the first appellant."

Background

3. The history of this appeal is detailed above. The facts, not challenged, are that the First Appellant came to the United Kingdom lawfully as a student and that the Second, Third and Fourth Appellants arrived at the same time as her dependents. Their application to vary leave to remain was made in time on 28 January 2014 and was accompanied by a confirmation of acceptance of studies (CAS) in respect of the First Appellant. The CAS was assigned on 21 January 2014. At the time it was issued the sponsoring college (Tier 4 Sponsor) held Highly Trusted Sponsor status. On 22 January 2014 the sponsor's status was downgraded to legacy status.
4. The Appellant's applications were refused on 14 March 2014. The application was refused because the First Appellant's CAS was issued by a legacy sponsor which, the Respondent said, would only be valid if it was assigned to a student who is re-sitting or repeating a module in order to complete a course of study already commenced whereas the course proposed by the First Appellant was a new course at a new institution.

5. In dismissing the appeal the First-tier Tribunal examined the Respondent's Tier 4 Policy Guidance and considered, in particular, paragraph 116 of Appendix A to the Immigration Rules and having done so came to the conclusion that the Respondent's decision was correct. The grounds of appeal to the Upper Tribunal challenge the interpretation of the Guidance made by the First-tier Tribunal and it is on this basis that leave to appeal has been granted.

Submissions

6. Mr Richards appeared on behalf of the Respondent and Mr Davies represented the Appellant. A rule 24 response was filed by the Respondent dated 27 April 2015 opposing the appeal.
7. For the Appellant Mr Davies referred to his written skeleton argument, the Tier 4 Policy Guidance (8/14) and the Tier 4 Guidance for Sponsors. There is no dispute over the chronology. Paragraph 116(da) provides that the Sponsor must hold Highly Trusted Status where the application is for a new course. Paragraph 116(db) shows that a CAS issued by a legacy sponsor will only be valid if it is issued for completion of a course already commenced. The Policy Guidance clearly states that if the sponsor becomes a legacy sponsor after the CAS was issued and it has not yet been used to support an application it will still be valid.
8. On behalf the Respondent Mr Richards said that having considered the skeleton argument and the Policy Guidance he could not oppose the appeal.
9. I said that the appeal against the decision of the First -tier Tribunal would be allowed and I set aside the decision of the First-tier Tribunal. Both representatives agreed that the decision should be remade allowing the appeal on the basis that the Respondent's decision was not in accordance with the law.

Error of law

10. The grounds of appeal to the Upper Tribunal concern a very narrow issue. The facts are dealt with above. The chronology is clear. The CAS was assigned on 21 January 2014 at a time when the sponsor held Highly Trusted Status. This status was downgraded to legacy on 22 January 2014. The application was made on 28 January 2014.
11. The First-tier Tribunal dismissed the appeal because at the time the application was made the sponsor did not hold Highly Trusted Status. The Appellants contend that this is a misinterpretation of the law. The reasons are clearly outlined in the grounds of appeal and the skeleton argument and were not challenged by Mr Richards. The First-tier Tribunal erred in considering paragraph 20 of the Guidance on the basis that the First Appellant already had an application under consideration when the

sponsor's status was downgraded. The First Appellant did not have an application under consideration at this stage. Page 65 of 78 of the Policy Guidance states

"If your sponsor becomes a legacy sponsor and you were assigned a CAS before the sponsor became a legacy sponsor which has not yet been used to support an application for leave to enter the UK you will still be able to apply for leave using the assigned CAS"

12. On the basis of paragraph 116(db) of Appendix A and the CAS should have been considered as valid. The First-tier Tribunal erred in law to find otherwise. On this basis I set aside the decision of the First-tier Tribunal.

Remaking the decision

13. Both representatives were content for me to remake the decision by allowing the appeal on the basis that the Respondent's decision was not in accordance with the law.

Summary

14. The decision of the First-tier Tribunal involved the making of a material error of law. I set aside the decision of the First-tier Tribunal.
15. I remake the decision of the First-tier Tribunal by allowing the appeal.

Signed:

Date:

**J F W Phillips
Deputy Judge of the Upper Tribunal**