



IAC-FH-AR-V1

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

Appeal Number: IA/40978/2014

**THE IMMIGRATION ACTS**

**Heard at Taylor House  
On 12 October 2015**

**Decision & Reasons Promulgated  
On 27 November 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**AHMED KATAULLY  
(ANONYMITY DIRECTION NOT MADE)**

**Appellant**

**and**

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

**Respondent**

**Representation:**

For the Appellant: None. EU Migration Services on file.

For the Respondent: Mr K Norton, Home Office Presenting Officer

**DECISION AND REASONS**

**The Appellant**

1. The appellant is a citizen of Mauritius born on 27 January 1983 and he made an application on 31 August 2014 to extend his leave as a Tier 4 (General) Student Migrant and for a biometric residence permit. That application was refused on 25 September 2014 under paragraph 245ZX(d) because he had not been awarded 10

points for maintenance funds. A decision was also made to remove him by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The appeal came before First-tier Tribunal Judge Turquet on 14 April 2015 and on 6 May 2015 she dismissed the appellant's appeal both under the Immigration Rules and on human rights grounds.
3. It had been the contention of the appellant that he had always had the required level of funds available in his account for 28 days to satisfy the maintenance requirements.
4. The decision letter of the Secretary of State read
  - “• You are required to show living costs of £1,640 plus your outstanding course fees of £5,495 as stated on your CAS. You are therefore required to show that you are in possession of £7,135 for a consecutive 28 day period to meet the Tier 4 (General) Student maintenance requirements.
  - As the closing balance of the bank statement submitted in support of your application is dated 18 August 2014 you need to show evidence of maintenance for 28 days from 22 July 2014 to 18 August 2014. On 18 August 2014 the bank statements you have submitted show a balance of £4,000 which does not demonstrate that the required level of funds is available to you.”
5. Judge Turquet recorded that the appellant claimed that with the application form that he provided a Confirmation of Acceptance letter (CAS) which confirmed payment of £3,300. He was thus only required to show the availability of £1,640 plus £2,195 totalling £3,835 in his account for 28 days prior to the application. He had submitted his Santander Bank account showing the availability of £4,000 in his account for 28 days and he had £4,000 and thus he was only required to show £3,835 to satisfy the requirements. He maintained that the respondent had not looked at the documentary evidence properly. The appellant maintained that he was the victim of unfairness and he should be awarded 10 points for maintenance.

### **Application for Permission to Appeal**

6. An application for permission to appeal against First-tier Tribunal Judge Turquet's decision was made. With his application the appellant claimed he submitted the Central Sussex College CAS letter dated 28 August 2014 confirming that on 26 August 2014 he paid £3,300 to the college as a tuition fee and thus a balance of only £2,195 remained unpaid. He had also submitted a receipt from the college dated 26 August 2014. He also submitted another letter dated 26 March 2015 from the college authority confirming on 26 August 2014 he paid £3,300 to the college as the tuition fees. The judge alleged that the appellant did not submit any evidence to show he had the figure of £7,135 throughout the 28 day period and erred.
7. On the date of the appeal hearing the Home Office submitted an online CAS letter which the appellant did not receive from the college. The appellant was shocked and surprised and this was an administrative error on the part of the college

authority. It also issued the online CAS letter with the wrong information. The judge wrote at paragraph 14: "There is no supporting evidence from the college explaining why the CAS did not indicate fees paid at the date the CAS was assigned" and the judge erred in law as the appellant had no knowledge that the college did not provide correct information regarding the payment tuition fees. Had the appellant had any knowledge that the CAS had issued a CAS letter with incorrect information regarding the payment of fees he would have gone to the college and collected an additional letter.

8. After receiving the Tribunal's determination the appellant contracted the college for an explanation. By a letter dated 13 May 2015 the college confirmed that on 26 August 2014 the appellant had paid £3,300 as tuition fee to the college and a letter was attached for ease of reference. The appellant submitted three independent pieces of documentary evidence confirming the payment of £3,300 on 26 August 2014 to which the judge did not refer and thus erred in law.
9. In addition to the above documents the appellant also bank statements from another amount number in which he had £4,000 for 28 days prior to the date of his application which was not considered by the judge.
10. In the light of **Naved (Student - fairness - notice of points) [2012] UKUT 14 (IAC)** it was respectfully requested to allow this appeal as the decision was not compatible with the common law duty to act fairly and was not in accordance with the law.

### **Grant of Permission to Appeal**

11. First-tier Tribunal Judge Simpson stated that there was a letter dated 26 March 2015 which confirmed that a deposit of £3,300 had been received by the college on 28 August 2014 and it was arguable that the online CAS marked "Used" was not accurate as it was arguable that it was unfair not to provide the appellant with the opportunity to make enquiries with the college as to this apparent discrepancy given that the online CAS was not served on him prior to the hearing.
12. The Rule 24 response was served at the hearing.

### **Conclusions**

13. A letter was sent by EU Migration Services dated 7 October 2015 confirming that the appellant would be unable to attend the hearing scheduled for 12 October and the matter should proceed without him or representation. I am satisfied that the appellant has submitted a sufficient explanation of his appeal and that the matter could proceed justly on the evidence before me.
14. I am not persuaded that there is an error of law in this decision. At paragraphs 14 and 15 the judge set out the following:

"14. The appellant's CAS assigned on 28.8.04 indicates that no fees were paid. According to the appellant he paid £3,300 on 26.8.2014. On his application form dated 31.8.2014 he stated that he had paid £3,300. The appellant submitted a

receipt indicating that he had paid £3,300 on 26.8.2014. However this is not shown on the CAS. There is no supporting evidence from the college explaining why the findings did not indicate fees paid at the date the CAS was assigned. The appellant did not submit a copy of his bank statement showing the payment of £3,300 and the balance in his account after payment.

15. In the event that he made a payment of 26.8.2014, he has not satisfied me on the balance of probabilities that he funds of £7,135 in his bank account for the 28 day consecutive period as required. Paragraph 11 of Appendix C provides that the appellant must provide the specified documents in paragraph 1B to show the funds available to him. The relevant requirement for the appellant is that he provide a personal bank or building society statement covering a consecutive 28 day period of time and that the most recent statement must not be dated more than 31 days before the date of the application. As the appellant only had £4,000 in his account on 18.8.2014, he has not explained how he could have made a payment of £3,300 on 26.8.2014 and still have a balance of £1,640 (maintenance) plus £2,195 (balance of fees) totalling £3, 835 at the date of application. The appellant has not satisfied me that he had the relevant funds of £7, 135 in his bank for the consecutive 28 day period as required. He does not meet the Tier 4 (General) Student Migrant maintenance requirements."
15. I can see from the CAS assigned on 28 August 2014 under the section "Accommodation and Fees" the course fees charged for the first year of the course were £5,495 and annexed to "Course fees paid to date" the total of £0 was inserted.
16. It is the appellant's contention that he paid the sum of £3,300 immediately prior to this CAS being assigned and this was not registered and indeed he produced a letter dated 28 August 2014 confirming that the appellant had paid £3,300 and that this was received by Central Sussex College on 26 August 2014. That may be the case but the difficulty with the appellant's case is that he submitted bank statements showing funds which were dated up to 18 August 2014. Further to paragraph 1B of Appendix C the appellant must show a consecutive 28 day period of time if he is applying as a Tier 4 Migrant. As the judge did acknowledge, the appellant had produced a Santander Bank statement from 18 July to 18 August 2014 but at no time did he go over the £4,000 limit. Up until 18 August which is the last date of the bank statements produced in accordance with the Immigration Rules to the respondent the appellant only had up to £4,000. The critical date is 18 August 2014 and at that date as the judge pointed out, he had not paid the fees and there was no evidence that he had any other funds. The appellant had to by virtue of paragraph 1B comply with the 28 day Rule but had not paid off his fees in time to demonstrate adequate funds under the 28 day Rule and a CAS which reflected a contribution to the fees.
17. The appellant has failed to meet the requirements of paragraph 245Z(d) and the judge has more than adequately explained her reasons. On examination of the file the CAS clearly shows that the appellant had not paid the £3,300 as at the date of the CAS.
18. It is clear that the respondent considered the CAS. **EK (Ivory Coast) v Secretary of State for the Home Department** [2014] EWCA Civ 1517 confirms that the onus is on

the appellant to comply with the rules. That is the case even where colleges make mistakes in respect of the CAS because of the requirement for predictability within the Rules. I am not persuaded in this instance that the college did make a mistake. The fact is that although the appellant stated in his application form that he intended to pay £3,300 the appellant had not done so by the date of the last bank statement. No bank statements were produced showing that the appellant had the relevant funds, even if he had paid the £3,300, for the relevant 28 day period. I am not persuaded that the appellant can demonstrate any unfairness.

19. There is no error of law and the decision of Judge Turquet shall stand.

Signed

Date

Deputy Upper Tribunal Judge Rimington