



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

Appeal Number: IA/42108/2014

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 2 June 2014**

**Determination Promulgated  
on 8 June 2015**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**ZUNAIR IQBAL**

Appellant

**and**

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

Respondent

Representation:

Appellant present      No representative

For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. By application dated 28 July 2014 the appellant sought to remain in the UK as a Tier 4 (General) Student under the Points Based System (PBS). The respondent refused that application by letter dated 23 October 2014 for failure to provide a valid Confirmation of Acceptance for Studies (CAS). The refusal under the heading of maintenance was consequential upon that.
2. The appellant appealed to the First-tier Tribunal. He did not ask for an oral hearing but was content for his case to be dealt with "on the papers". In his grounds he maintained that he was a *bona fide* student, that he had provided a CAS reference, and that he had been unable to sit his English

test because the respondent had delayed in returning his passport. In a determination promulgated on 22 January 2015 Judge Shergill found the appellant had failed to provide the specified documents and information with his application, that there had been no unfairness in the respondent's procedure, and dismissed the appeal.

3. The appellant sought permission to appeal to the Upper Tribunal. By decision dated 16 March 2015 Judge Shimmin granted permission on one ground only:

"It is arguable that the respondent should have applied evidential flexibility, returned the appellant's passport to him and given him a sufficient period in which to obtain a valid CAS. This case is arguably different in that the respondent, by holding the passport, prevented the appellant remedying the position."

4. At the hearing on 2 June the appellant referred to his letter to the respondent dated 15 September 2014 asking for return of his passport as it was a requirement before he could sit an English language test. He had booked the test provisionally for 23 September 2014. He said that he never received any reply to his letter.
5. Mr Matthews submitted that the Rules require the appellant to submit a CAS with his application, not later. In order to obtain the CAS the appellant would have needed to pass the English language test before not after he submitted his application. If he had been prevented by the respondent holding his passport from taking the test at an earlier time, that might have been procedurally unfair. That was what the judge granting permission appeared to think might have happened. However, on examination of the timescale that was not the case. The appellant had simply left matters too late. In any event, he has a remedy. If he is now in a position to make a valid Tier 4 application he has 28 days after the end of these proceedings to do so without leaving the UK.
6. The appellant in response said that he had been led by the respondent's website to believe that he would be given the opportunity to rectify any missing document. Unfortunately the college to which he applied would not accept the English language certificate which had previously been sufficient for his purposes. They wished a "Pearson test".
7. I advised the appellant that there was no error of law in the determination and that the decision would stand.
8. The scheme of the PBS is highly detailed and prescriptive. It requires applications to be accompanied by all necessary evidence. There are limited exceptions, within which this case does not fall. There would be no reason for the respondent to think that the appellant might have a valid English language test certificate and valid CAS to produce. By his own account, at the relevant time he did not. There was no obligation on the respondent to contact him and give him time to perfect his application.

9. The determination of the First-tier Tribunal shall stand.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

Upper Tribunal Judge Macleman  
4 June 2015