



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/42609/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 17<sup>th</sup> September 2015

Decision & Reasons Promulgated  
On 28<sup>th</sup> September 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

MR IMRAN JAHANGIR  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation**

For the Appellant: Mr Z Nasim, Counsel instructed by Pioneer Solicitors  
For the Claimant: Mr P Duffy, Senior Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Clark dismissing the appeal against the Respondent's decision to refuse leave as a Tier 4 (General) student and removal directions under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The Appellant appealed against the decision of Judge Clark and was granted permission to appeal by First-tier Tribunal Judge Andrew. The basis upon which permission was granted may be summarised as follows:
  - (i) The Appellant did not and does not have a CAS and therefore cannot meet the requirements of the Rules in relation to his application as a Tier 4 student, however it is an arguable error of law for the Judge to have made no findings in relation to the allegations under paragraph 322(1A) of the Immigration Rules which is relevant to any future applications the Appellant may make. It was not arguable that the judge did not consider Article 8 ECHR when it was not a ground of appeal before him.
3. I was provided with a Rule 24 response from the Respondent wherein she appeared to accept that the judge was obliged to make findings on the matter of paragraph 322(1A) which, on the evidence before the judge, demonstrated that the Respondent had not discharged the burden of proof and therefore the appeal against that part of the refusal should have been upheld.

### **Discussion**

4. At the close of submissions, I indicated that although there appeared to be an error of law as stated in the Rule 24 Reply my decision would follow in writing. That decision follows hereafter. I find that there was an error of law in the decision such that it should be set aside. My reasons for so finding are as follows.
5. In relation to the Rule 24 Reply, Mr Duffy confirmed that the concessions made within were maintained and should be taken as read. Mr Duffy accepted that the judge should have made findings in relation to the paragraph 322(1A) reason for refusal. Mr Nasim indicated that there was no basis to support the judge's conclusion at §12 that he was unable to make any finding in relation to the assertion of supplying a false ESOL certificate in light of the statement earlier at §7 that there was no further evidence to adduce from the Respondent and no information as to the basis for the assertion that the ESOL certificate was false.
6. Both advocates agreed that the 322(1A) matter should be disposed of in the Appellant's favour in light of the failure by the Respondent to provide any evidence discharging the burden of proving the assertion of falsity.
7. Mr Nasim attempted to persuade me to consider other errors of law in the decision; however, given that the solicitors for the Appellant did not seek to renew the grounds for permission in light of the limited nature of the grant by Judge Andrew, I was not minded to entertain such a late application.
8. Given that both advocates were in agreement that the failure to decide the paragraph 322(1A) matter amounted to a discrete error in the decision and both agreed that that

issue should be remade in the Appellant's favour, I could discern no reason not to follow the course that they jointly proposed and requested me to follow.

**Error of Law**

9. In light of the above agreement and concession by the Respondent, I find that the decision of Judge Clark involved the making of an error of law in relation to the discrete issue of paragraph 322(1A) and consequently, I set aside paragraph 12 of the decision alone.
10. I reach this conclusion due to the discussion above and given that the Respondent accepts that the matter should have been addressed as material to future applications and that it should fall to be decided in the Appellant's favour. I also noted that this formed a ground of appeal and consequently, the issue should have been decided to provide a comprehensive decision and to assist both parties in relation to a previous allegation of falsity, which would have a material impact on a future application that Mr Nasim indicated his client would likely make.
11. I find that in the absence of any evidence demonstrating falsity in the ESOL certificate either before the First-tier Tribunal or before me that the Respondent has, as she admits, failed to discharge the burden of proof upon her and consequently this limb of the appeal falls to succeed as the Respondent has not proven that the either the ESOL document was false, nor that the Appellant used deception.
12. However, as the Appellant was not given permission to challenge the findings in relation to his inability to submit a CAS, the appeal still unfortunately fails. Nonetheless, the Appellant is of course entitled to make a further application within 28 days of this appeal coming to a close, should he be so advised.

**Decision**

13. The appeal to the Upper Tribunal is allowed.
14. Paragraph 12 of the decision of the First-tier Tribunal is set aside concerning the conclusion on paragraph 322(1A). The Appellant's appeal is remade in relation to that discrete issue in the Appellant's favour. However, the appeal must still fail as in the absence of a CAS, the Appellant failed to meet the Immigration Rules.
15. The remaining findings and decision of Judge Clark are preserved.

**Anonymity**

16. The First-tier Tribunal did not make an anonymity order. I was not invited to make any such order and in any event, I see no reason to make such an order.

**Fee Award**

17. As the appeal remains refused, the Appellant remains unentitled to a fee award.

Signed

Date

Deputy Upper Tribunal Judge Saini