



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/01312/2015

THE IMMIGRATION ACTS

Heard at Field House
On 14 March 2016

Decision and Reasons Promulgated
On 4 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

GURINDER BAJWA
(Anonymity Direction Not Made)

Appellant

Respondent

Representation:

For the Appellant: Mr S Staunton, Senior Home Office Presenting Officer
For the Respondent: Ms M Malhotra (counsel) instructed by Malik Law Chambers, solicitors.

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal, but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Thanki, promulgated on 30 July 2015, which allowed the Appellant's appeal to the limited extent that the Judge found the respondent's decision was not in accordance with the law.

Background

3. The Appellant was born on 12 August 1984. He is a national of India.

4. On 17 December 2014 the Secretary of State refused the Appellant's application for leave to remain in the UK as a tier 4 (general) student.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Thanki ("the Judge") allowed the appeal against the Respondent's decision and remitted the case to the respondent to make a lawful decision, directing that no such decision should be made for 60 days from the date of promulgation of his decision to enable the appellant to obtain a fresh CAS and to enable the appellant to vary his existing application to study at the address given in the new CAS letter.

6. Grounds of appeal were lodged and, on 28 January 2016, Judge Ford gave permission to appeal stating *inter alia*

"3. The decision records that the CAS was issued by a sponsor that was no longer on the register and that it was also withdrawn by the sponsor. The sponsor appears to have lost its licence on the same day that the decision was made. It is unclear from reading the papers when the CAS was withdrawn by the sponsor (although the appellant says it was withdrawn on the date of decision)."

"4. If the CAS had been withdrawn prior to the date of decision, then the grounds are arguable because the policy did not apply. But if a CAS was withdrawn on the same day as the decision was made then the grounds may not be arguable. As no clear findings were made on this issue permission is granted."

"5. There is an arguable material error of law"

7. Mr Staunton, for the respondent, produced a printout which indicated that the licence of the sponsoring College was revoked on 16 December 2014. He reminded me that the date of decision was 17 December 2014, so that the CAS licence was revoked the day before the decision was made. He told me that possession of that knowledge made it difficult for him to argue the grounds of appeal.

8. Miss Malhotra, counsel for the appellant, restricted her submission to telling me that the decision does not contain a material error of law. She urged me to dismiss the appeal and allow the decision to stand.

Analysis

9. In Patel (Tier 4 – no ‘60-day extension’) India [2011] UKUT 187 (IAC) the Tribunal held that (i) Where a sponsor’s Tier 4 licence is withdrawn, the UKBA Policy Guidance as at November 2009 (page 52) operates to restrict the remaining leave granted to 60 days where a student has more than six months’ of the original leave remaining. It has no effect on periods of less than six months; (ii) The policy does not operate to extend leave and in particular, it does not provide a 60 day extension of leave to remain in a case where that leave to remain has already expired; (iii) The 60 day restriction, if applicable, runs from the time when the Secretary of State notifies the student of the imposition of the restriction following the withdrawal of the licence.

10. In Kaur (Patel fairness: respondent’s policy) [2013] UKUT 344 (IAC) it was held that (i) The respondent has produced a policy, which is intended to give effect to the principles of common law fairness identified in Patel (relocation of sponsor licence – fairness) [2011] UKUT 211 (IAC) and is designed to deal fairly with applicants whose college of choice loses a sponsor licence whilst the application for leave to remain is outstanding; (ii) In essence, the policy provides that, in cases of potential discretionary refusal under paragraph 322 of the immigration rules, caseworkers should follow the ‘Patel’ process. Where this is not done, the resulting decision will not be in accordance with the law.

11. It is now common ground that the CAS licence was revoked the day before the decision was made in this case. At [15] of the decision the Judge correctly takes guidance from the case of Kaur. At [16] of the decision the Judge explains why he finds that the duty of fairness has not been complied with by the respondent.

12. The Judge clearly directs himself correctly in law at [15] of the decision. The finding that the Judge makes at [16] of the decision is a finding which is manifestly open to the Judge to make and is a finding which (logically) leads to the Judge’s conclusion at [17], that the respondent’s decision is not in accordance with the law. The respondent’s policy is quoted by the respondent in the grounds of appeal. It is clear that the appellant’s case falls within the category of cases envisaged by the respondent when formulating that policy. It is equally clear that the respondent did not extend the benefit of that policy to the appellant.

13. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

14. The Judge considered each strand of evidence placed before him. He records the submissions that were made and then, after correctly directing himself in law, makes reasoned findings of fact before reaching conclusions which were manifestly open to the Judge to reach.

15. I find that the Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed and based on cogent reasoning. The decision does not contain a material error of law.

CONCLUSION

16. No errors of law have been established. The Judge's decision stands.

DECISION

17. The appeal is dismissed. The decision of the First-tier Tribunal stands.

Signed

Date 21 March 2016

Deputy Upper Tribunal Judge Doyle