



IAC-AH-DP-V1

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

Appeal Number: IA/04908/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 5 April 2016**

**Decision & Reasons
Promulgated
On 3 May 2016**

Before

UPPER TRIBUNAL JUDGE WARR

Between

**NAWAZ GUL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr W Malik

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 29 November 1988. On 19 August 2014 he applied for leave to remain as a Tier 4 (General) Student under the points-based system. This application was refused on 21 January 2015.

2. The appellant appealed against the decision and his appeal came before First-tier Judge Mill on 27 August 2015 when the appellant was unrepresented. The judge sets out the material facts and his findings in the following extract from his determination:

- “9. At pages D1-D3 of the Respondent’s bundle the Certificate of Acceptance of Studies (CAS) check carried out as at the date of the Respondent’s decision (21 January 2015) is produced. There are two issues which arise from this. Firstly, the CAS has been marked as “WITHDRAWN”. There is also a clear indication that as at that date the Sponsor’s licence is revoked.
10. The Appellant’s Appeal was based upon the fact that erroneous information had been provided by Newcastle Academy of Business & Technology. The said Organisation had issued a letter in August 2014 confirming the Appellant was enrolled to study on a full-time basis, a course entitled OTHM Level 7 Diploma in Tourism & Hospitality Management. This had been the basis upon which the Appellant’s Application had been made.
11. In the Appellant’s bundle he had lodged a subsequent letter from the said Organisation which is dated 26 January 2015. This purports that the information which the Respondent had received upon checking the CAS was based upon “an administrative clerical error” for which they took responsibility.
12. Even if I am to accept at face value that there had, as a matter-of-fact, been such an administrative clerical error and that the CAS was not withdrawn as the Respondent had identified upon carrying out the CAS check at the date of their decision, there remains in my view a significant difficulty for the Appellant.
13. The Newcastle Academy of Business and Technology had had their licence revoked as at the date of the Respondent’s decision. Similarly, as at the date that they wrote the letter seeking to take responsibility for an apparent administrative clerical error on their part they did not have the required status to issue any CAS.
14. Paragraphs 116 onwards of Appendix A of the Immigration Rules set out the formal requirements for a CAS to be valid. The CAS is not valid if it has been withdrawn and it requires to be issued by an Institution with a Tier 4 (General) Student Sponsor Licence.
15. I am somewhat sceptical about the veracity of the suggestion made by the Organisation that the withdrawn status was as a result of an administrative clerical error. No detail has been provided or specification given as to how the error came about. Even if am wrong about that then the fact that the Organisation did not hold an appropriate Student Sponsor Licence as at the

date of the Respondent's decision means that the CAS would not be valid anyway. In these circumstances the Respondent would have been obliged to refuse the Appellant's Application regardless of any administrative error. This is an unarguable conclusion and fact.

16. The Appellant was unable to advise of any further steps taken by him to pursue any studies, now for some 9 months. It does not appear that he is a genuine student.

17. In the above circumstances the Appeal must fail. The Appeal was based upon the Immigration Rules. There were no other grounds of Appeal."

3. Accordingly the judge dismissed the appeal.
4. The appellant applied for permission to appeal referring to **Patel [2011] UKUT 00211**. Permission to appeal was granted on 25 February 2016 by the First-tier Tribunal. It was said to be unclear whether the Sponsor's licence was revoked prior to the application or during the application process.
5. A response was filed by the Secretary of State on 1 March 2016 submitting that the appellant's CAS was withdrawn by his Tier 4 Sponsor before the college licence was revoked. If the CAS was erroneously withdrawn by the college that was a matter between the student and his college and not the Secretary of State. The respondent referred to **EK (Ivory Coast) [2014] EWCA Civ 1517**.
6. At the hearing Mr Bramble lodged a document showing that the revocation of the licence had taken place on 16 December 2014. Mr Malik objected on the basis that a request for this information had been made eleven days previously. He acknowledged that an earlier request could have been made. He submitted that the licence having been revoked, 60 days notice should have been given.
7. Mr Bramble pointed out that the date of decision was 21 January 2015. The document attached to the respondent's bundle at page D1 showed that the CAS had been withdrawn on 6 October 2014. Following that the licence had been revoked on 16 December 2014. Mr Bramble referred to paragraph 35 of **EK (Ivory Coast)**:

"In my view, the circumstances in which the PBS applies are not such that it would be fair, as between the Secretary of State (representing, for these purposes, the general public interest) and the applicant, to expect the Secretary of State to have to distort the ordinary operation of the PBS regime to protect an applicant against the speculative possibility that a college has made an administrative error in withdrawing a CAS letter, rather than withdrawing it for reasons which

do indeed indicate that no leave to enter or remain ought to be granted. The interests of applicants such as the appellant are not so pressing and of such weight that a duty of delay and enquiry as contended for by the appellant can be spelled out of the obligation to act fairly.”

8. The Court of Appeal had considered the Tribunal cases including that of **Patel** in paragraph 38 of the decision. Mr Bramble submitted that the Court of Appeal had disagreed with what had been said by the Tribunal in **Naved [2012] UKUT 14 (IAC)** at paragraph 40 of its decision. The position was quite clear in this case. The sponsor had withdrawn the CAS on 6 October 2014. The college licence had been revoked subsequently on 16 December 2014.
9. Mr Malik referred to guidance to the effect that the college had no power to revoke the licence. I pointed out that this point had not been taken in the grounds of appeal and moreover the guidance referred to in the grounds was to the effect that the CAS could be withdrawn or cancelled at any time by either the respondent or the Tier 4 sponsor.
10. I reserved my decision. It is quite clear on the chronology that the sponsor withdrew the CAS and as a result of that the respondent took her decision to withdraw the licence. It is immaterial whether the sponsor had withdrawn the CAS in error or not.
11. Paragraph 35 of **EK (Ivory Coast)** which I have set out above deals with the issue of fairness where it is said that a college has made an administrative error in withdrawing a CAS letter. The Court of Appeal distinguished the circumstances in **Patel** and the other cases referred to in paragraph 38 of its decision. As is pointed out by the Court of Appeal

“... the Secretary of State had no means of knowing why the appellant’s CAS letter had been withdrawn and was not responsible for its withdrawal and the fair balance between the public interest in the due operation of the PBS regime and the individual interest of the appellant was in favour of simple operation of the regime without further ado.”

12. As I have said above the Court of Appeal disagreed with what had been said in **Naved** finding in paragraph 40 that what had been said left out of account:

“...the highly modulated and fact-sensitive way in which the general public law duty of fairness operates. It also pays insufficient attention to the issue which lies at the heart of the cases in this area, which confirms the fair balance to be struck between the public interest in having the PBS regime operated in a simple way and the interest of a particular individual who may be detrimentally affected by such operation. The public interest here, of course, includes the interests

of the Secretary of State as administrator, of the taxpaying public (who fund the immigration system and would like it to run efficiently) and of the general body of applicants for leave to enter or remain (who have an interest in the PBS regime operating in a fair and efficient way, with a minimum of delay).”

13. There was no obligation on the respondent to do more than act on what the college had done, mistakenly or not. It was argued that the college had no power to do what it had done but this was not a point taken in the grounds as I have mentioned. The grounds refer to different guidance and the guidance to which I was taken by Mr Malik says on its face that it was to be used from 12 November 2015, which is of course after the respondent’s decision.
14. It may also be pertinent to observe that the judge was somewhat sceptical about what the appellant’s college had said and in addition took the view that the appellant did not appear to him to be a genuine student. I can see no basis for an argument that there was unfairness in this case bearing in mind the observations of the Court of Appeal in **EK (Ivory Coast)** and the points made by Mr Bramble.
15. The decision of the First-tier Judge was not affected by any material error of law and accordingly it is confirmed and this appeal is dismissed.

Notice of Decision

Appeal dismissed.

Anonymity Order

The First-tier Judge made no anonymity direction and I make none.

TO THE RESPONDENT **FEE AWARD**

The First-tier Judge made no fee award and I make none.

Signed

Date 13 April 2016

G Warr, Judge of the Upper Tribunal