Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/43237/2014**

THE IMMIGRATION ACTS

Heard at : Field House	**Decisions and Reasons Promulgated**
On 30 March 2016	**On 10 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MOHANED ABDULHAMID A MOHAMED ABUHEIMA

Respondent

Representation:

For the Appellant: Mrs N Willcocks-Briscoe, Home Office Presenting Officer
For the Respondent: Mr T Bahja, Counsel instructed by Forward & Yussuf Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr Abuheima's appeal against her decision to refuse his application for leave to remain as a Tier 2 (General) Migrant.

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Mr Abuheima as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of Libya born on 7 February 1979. He entered the United Kingdom on 13 July 2006. He was granted leave to enter as a student and then latterly as a Tier 1 Post Study Worker until 2 August 2014. On 29 July 2014 the appellant applied for further leave to remain as a Tier 2 (General) Migrant.

4. According to the respondent, the appellant's sponsor's licence was cancelled on 13 August 2014 and a decision was therefore made, on 13 October 2014, refusing his application for leave to remain and giving directions for his removal under section 47 of the Immigration, Asylum and Nationality Act 2006.

5. The appeal came before First-tier Tribunal Judge Zahed on 19 May 2015. The respondent was represented and Mr Bahja appeared for the appellant. There was no dispute before the judge that the appellant could not succeed under the Immigration Rules as he did not have a valid Certificate of Sponsorship. The judge noted that there was; amongst other things, a respondent's and appellant's appeal bundle and a Skeleton Argument. The judge heard evidence from the appellant. Essentially, the judge found that the appellant should have been sent a letter granting him a period of time in which to find a new sponsor and make a fresh application. He allowed the appeal on that limited basis.

6. Permission to appeal to the Upper Tribunal was sought by the respondent on the grounds that the judge had misdirected himself by reference to the guidance in **Patel (India) [2011] UKUT 211.** Permission to appeal was granted on 11 February 2016 on all grounds.

Appeal Hearing

7. At the hearing Mrs Willocks-Briscoe noted the brevity of the decision and the judge's failure to refer to any of the evidence before him as well as the respondent's submissions. She submitted that the judge failed to give adequate reasons and failed to identify a policy applicable to Tier 2 Migrants allowing a period of grace. She stated that the case of **Patel** (supra) concerned students and that the principles therein did not extend to Tier 2 Migrants.

8. Mr Bahja acknowledged that the judge's decision should have been more detailed, but he nevertheless submitted that the judge did not err in law. He submitted that the judge correctly applied **Patel** even though he did not refer to it. He stated that the appellant was entitled to a 60-day reprieve in order to find a new sponsor as the sponsor's licence was cancelled after the application was lodged. He referred to his Skeleton Argument before the judge and the Tier 2 policy guidance. He stated that it was not open to the appellant to vary his application as his leave had been extended by virtue of s.3C of the Immigration Act 1971.

9. In reply, Mrs Willocks-Briscoe submitted that it was open to the appellant to vary his application up until the time a decision was made and she reminded the Tribunal that no record of the evidence was referred to in the judge's decision.

Consideration and Findings

10. Whilst Mr Bahja made a valiant attempt to defend the decision, I am satisfied that the judge's decision involved the making of an error of law such that the decision must be set aside.

11. There is no dispute between the parties that the judge's decision is very brief and does not refer to the evidence and the respondent's submissions. The decision consists of eight paragraphs. The first five paragraphs refer to the background to the appeal proceedings, the documentation submitted in support of the appeal and the fact that the appellant gave oral evidence. At paras. [6], [7] and [8] the judge stated as follows:

> "6. The appellant argues that he should have been granted 60 days in order to find a new Sponsor, as the cancellation of his Sponsor's Licence was not his fault. I find that the appellant's position is akin to those Tier 4 students who had a valid CAS at the time of application but at the time of decision the CAS became invalid as the Sponsor's Licence was revoked. In those circumstances the respondent had a policy that they would inform the appellant that their CAS was not valid and were given a period of time in which to submit a further CAS before the decision was to be made.
>
> 7. I find that the respondent should have sent a letter to the appellant to state that at the time of looking at his application his Sponsor's Licence had been revoked and that he would be allowed a period of time in order to submit a fresh Sponsor's licence at which time a decision would be made on his application. I find that the appellant had submitted a valid Certificate of Sponsorship at the time of application and his Sponsor had a valid licence. I also find that the appellant did not have anything to do with the Sponsor's Licence being revoked.
>
> 8. I find that the respondent has acted not in accordance with the law. I thus allow the appeal to the extent that the matter is sent back to the respondent to make a lawful decision and that the decision on the appellant's application is still outstanding."

In allowing the appeal to this limited extent I am satisfied that the judge's reasoning is inadequate.

12. Whilst brevity in decision-making can be a virtue, the judge must demonstrate that he has considered the respective position of the parties' and has reached a sufficiently reasoned decision in accordance with the evidence. This I find the judge failed to do. As Mrs Willocks-Briscoe pointed out, there is no reference to the evidence or to the respondent's submissions. No findings of fact have been made in respect of the appellant's credibility save that he was not complicit in the cancellation of the sponsor's licence albeit there was no suggestion to the contrary. Findings of fact, in respect of the background were pertinent to the

question of fairness. For instance, the evidence before the judge indicated that the sponsor was aware as early as 13 August 2014 that its licence had been suspended. This was shortly after the appellant made his application on 29 July 2014 and long after the respondent's decision to refuse the application on 13 October 2014. A period of two months thus lapsed in which the appellant could have sought to vary his application had he been aware of the suspension. No consideration has been given to such issues. It is clear from the Skeleton Argument put before the judge that detailed arguments in relation to the question of fairness were raised. None of those arguments have been considered and determined and there is no reference to the principle of "fairness" in the decision. These failings are material to the decision as the appellant's case was essentially put on the basis of "fairness".

13. What the judge was not entitled to do, as is the case here, was to equate the respondent's policy of granting a period of 60 days leave to students, to that of Tier 2 Migrants simply by reference to that policy. Mr Bahja stated that he placed a similar policy before the judge and indeed produced a copy of it to the Upper Tribunal. There is no reference to that policy in the decision and it is not apparent that the judge considered the same. On closer inspection of that policy guidance, I note that paragraphs 242 to 244, upon which reliance is placed by Mr Bahja, refers to a 60 day period in circumstances where leave has been curtailed which is not the position of the appellant. Nevertheless, I accept that these are all arguments the judge should have but failed to consider and are material to the question of fairness.

14. It is essentially for these reasons that I find that the judge's decision cannot stand. Both parties agreed that given the lack of consideration and findings on material issues raised in the appeal that the appropriate course would be to remit the matter to the First-tier Tribunal for rehearing. I agree with that disposal. The First-tier Tribunal rehearing the appeal should make findings, in particular, on whether the policy identified by Mr Bahja is applicable to the appellant and, if not, whether any unfairness arises in this case.

DECISION

The making of the decision of the First-tier Tribunal involved an error on a point of law. The Secretary of State's appeal is accordingly allowed and the decision of the First-tier Tribunal is set aside. By agreement of the parties the appeal is remitted to the First Tier Tribunal for rehearing before a judge other than Judge Zahed.

Signed

Deputy Upper Tribunal Judge Bagral Dated