



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

Appeal Numbers: IA163112015
IA163122015

THE IMMIGRATION ACTS

Heard at Field House

On 20 April 2017

**Decision &
Promulgated
On 8 May 2017**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**MRS ANURADHA
MR SARBJIT KUMAR
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr V Makol of Counsel instructed by Maalik & Co Solicitors
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of India born on 8 January 1983. The main Appellant first entered the United Kingdom with entry clearance as a Tier 4 (General) Student Migrant on 24 January 2010 with leave valid until November 2011 which she subsequently extended until 4 August 2014. She entered the United Kingdom with her dependent partner on 23 September 2013 and he was given leave in line with her. The Appellant made a further application for leave to remain as a Tier 4 Student. , On 26 January 2015, whilst the applications were pending, the first Appellant

received a notice from the Respondent that the Sponsor college had been removed from the register of licensed Sponsors. The Respondent informed the first Appellant that in accordance with published policy she would be given discretionary leave of 60 days within which to secure a new Sponsor and to amend or resubmit her application. The first Appellant failed to secure a new Sponsor, consequently the applications were refused on 15 April 2015 on the basis that the first Appellant had no valid CAS and that her dependent partner was to be refused in line with her.

2. The Appellants appealed and their appeal came before Judge of the First-tier Tribunal M J Gillespie for hearing on 25 February 2016. In a decision promulgated on 4 March 2016, the judge dismissed the appeals. The Appellants were represented at the hearing. The judge made the following findings of fact at [10]:

"10. I am prepared to assume the reliability of the generality of the allegations for the Appellant. In particular that she did attempt to win a place and sponsorship within the period of grace but for various reasons, not shown to have been connected with any assumed lack of qualification or means on her part, was unsuccessful in so doing.

11. I reject the suggestion that the decision was not lawful, in particular that it was not in accordance with the policy of the Respondent. The actions of the Respondent were foursquare in line with the rules and with its published policy as to the application of the rules. I further reject any suggestion that the decision was not in accordance with a principle of common law fairness. The policy of the Respondent is expressly devised to take into account the principle of fairness and, in fairness, to give a person who has, without fault, suffered from the de-registration of the Sponsor, fair opportunity to regularise his position. It might well be, for whatever reason, that not all students will be able so to do within a period of 60 days. In such an event, however, there is no necessary principle of fairness that they should nevertheless be permitted an extended period of stay in the United Kingdom, as a matter of discretion and outside the rules."

The judge proceeded to dismiss the appeals.

3. Permission to appeal to the Upper Tribunal was sought on the basis essentially that the case was one concerned with fairness and that the Appellant did not have a fair opportunity to obtain a further Sponsor and a CAS because the 60 days ran as a period of time where there was no admission for courses starting in September of that year. Permission to appeal was granted by First-tier Tribunal Judge Simpson in a decision dated 24 February 2017 on the basis:

- “3. ... As the Judge did not consider the case of *Marghia* (procedural fairness) [2014] UKUT 366 (IAC), or indeed expressly refer to any other case, it is arguable that by omitting to consider this or any other relevant cases, that there has been a procedural irregularity in reaching his decision.”
4. The Respondent filed a Rule 24 response on 8 March 2017 which provides inter alia as follows:
- “4. It is submitted that the grounds have no merit.
5. It is submitted that the 60 day policy has not been found to be ultra vires since its introduction. As Judge Gillespie has found at his paragraph 11 of the determination the policy is expressly devised to take into account the principle of fairness.”
6. With the greatest of respect of Judge Simpson in granting permission the Respondent fails to see that any of the points raised in the grant of permission are even arguable let alone material to the outcome of the appeal.”
5. At the hearing before me, the Appellant was represented by Mr V Makol of Counsel instructed by Maalik & Co Solicitors. The Respondent was represented by Ms J Isherwood. I ascertained from Ms Isherwood that she sought to rely upon the Rule 24 response and then indicated to Mr Makol that I considered that the grant of permission by the First-tier Tribunal had been misconceived, in that the Respondent had exercised discretion in accordance with her policy and provided the Appellant with a 60 day grace period. There was thus no unlawfulness on the part of the Respondent and the judge was entitled to dismiss the appeal and there was no error of law, material or otherwise, in his decision. Mr Makol essentially accepted that but wished to reiterate that the 60 days’ grace period was effectively redundant as the Appellant had not been able to make any use of it and it was unfair because it was not possible to gain admission to university prior to July because all the courses start in September and October. He submitted that ultimately, this has resulted in unfairness to the Appellant.
6. Whilst it may be that the 60 day discretionary period did not avail the Appellant in this particular case due to the timing of when that period began and ended, this does not mean that there is any material error of law in the decision of First-tier Tribunal Gillespie. The fact of the matter is that when the Respondent made her decision on 15 April 2015, the first Appellant had no valid CAS and thus did not meet the requirements for a grant of further leave under the Immigration Rules. The Judge was, therefore, bound to dismiss her appeal. Any issues in respect of the Respondent’s discretionary policy are matters that can be raised via different channels but as to this particular decision there is no material error of law and I uphold the decision of First-tier Tribunal Judge Gillespie.

Notice of Decision

There is no error of law in the decision of First tier Tribunal Judge Gillespie dismissing the appeal, with the effect that the decision of the First tier Tribunal to dismiss the appeal is upheld.

No anonymity direction is made.

Signed Rebecca Chapman

Date 4.5.17

Deputy Upper Tribunal Judge Chapman