



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: IA/23546/2015

THE IMMIGRATION ACTS

Heard at Field House
On 15 June 2017

Decision and Reasons Promulgated
On 29 June 2017

Before

Deputy Upper Tribunal Judge Mailer

Between

MR MD FAZLUR RASUL KHAN
NO ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr Z Rahman, legal representative (Londonium Solicitors)
For the Respondent: Ms Z Ahmad, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Bangladesh, born on 2 December 1981. He appeals with permission against the decision of First-tier Tribunal Judge Monson, promulgated on 10 October 2016, dismissing his appeal against the decision of the respondent to refuse to vary his leave to remain as a Tier 4 (General) Student Migrant. The respondent had asserted that he was not entitled to receive any points for his CAS.
2. In granting the appellant permission to appeal to the Upper Tribunal, First-tier Tribunal Judge Kelly found that it was arguably an error of law for the Tribunal to

conclude firstly that the appellant was the author of his own misfortune in failing to chase the respondent for a 60 day letter and secondly, that the duty to act fairly did not therefore operate so as to require the respondent to issue of her own volition a notice granting him a 60 day period within which to obtain such a certificate.

3. Mr Rahman adopted the grounds of appeal. The Judge was wrong to conclude that the appellant should not receive a 60 day letter simply because he ought to have known when his sponsor lost their licence. Such knowledge does not spare the respondent from her duty to follow her own published policy and to act fairly.
4. It was also submitted that the appellant “genuinely” does not have any idea when his sponsor lost their licence. He is therefore a bona fide student. The Judge failed to consider the material fact that the sponsor lost its licence before the respondent made her decision. Accordingly, the Judge failed to deal with the issue of fairness in accordance with the decision in Patel (Revocation of sponsor licence-fairness) India [2011] UKUT 00211 (IAC).
5. The appellant had provided a CAS which was valid on the day he submitted his application. However, no heed was paid to that by the First-tier Judge. The loss of his sponsor's licence was an event beyond his control and he is not “blameworthy” for the revocation.
6. On behalf of the respondent, Ms Ahmad adopted the Rule 24 response. The Judge directed himself appropriately. In order to benefit from the grant of a reasonable opportunity to vary his application, the appellant had to demonstrate that he was both unaware of the revocation and not a party to the reasons for it.
7. She submitted that the appellant was aware that the sponsor's licence had been revoked well before the decision was taken in this case. Indeed the decision was not taken for another four months after the licence was revoked.

Assessment

8. In Patel, supra, the Upper Tribunal held that where a sponsor licence has been revoked by the secretary of state during an application for variation of leave and the applicant is both unaware of the revocation and not party to any reason why the licence has been revoked, the secretary of state should afford the applicant a reasonable opportunity to vary the application by identifying a new sponsor before the application is determined. A 60 day period to amend the application would provide such a fair opportunity.
9. It is contended on behalf of the appellant at paragraph 6 of the grounds of appeal, that the Judge was wrong to conclude that the appellant should not receive a 60 day letter simply because “he ought to have known” when the sponsor lost the licence.

10. However, that contention is misleading as Judge Monson had regard to the appellant's evidence at the hearing, namely, that he had become aware that the college had lost its licence before he received the refusal decision. He heard about it from a friend and checked the information on the website. News of the revocation had reached him one week after the event happened. He learned that the college had lost its licence within three months of making the application in September 2014. He had not contacted the Home Office to vary his application but had decided to wait for the decision on the current application.
11. Judge Monson accepted at paragraph [15] of his decision that there was no documentary evidence to show that the Home Office formally notified the appellant of the revocation of the sponsor's licence and issue him with 60 day letter to enable him to approach an alternative sponsor. He found however, that if there was an omission in this regard, it did not operate to the appellant's detriment as he became aware that his sponsor had lost his licence within three months of making his application in September 2014. Accordingly he knew, or ought to have known, that his pending Tier 4 application was bound to fail.
12. He went on to find that the appellant needed to be pro active in obtaining a 60 day letter from the Home Office to enable him to obtain a new CAS. It was not open to the appellant to sit on his hands and wait for the inevitable refusal. It is in that context that the Judge found that he was the author of his own misfortune and not a victim of common law unfairness.
13. The Judge has properly directed himself in accordance with authority. He has properly applied the facts pertaining in this case. He concluded on the basis of the appellant's own evidence that he had been well aware that his sponsor had lost its licence in three months of making his application. It is not disputed that he had ample opportunity to obtain a new CAS. In the circumstances the finding that the appellant was not the victim of common law unfairness was a decision to which the Judge was entitled to come.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of any error on a point of law. It shall accordingly stand.

No anonymity direction is made.

Deputy Upper Tribunal Judge C R Mailer

Date 28 June 2017