Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: IA/27824/2015**

IA/27825/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 2 May 2017	**On 16 May 2017**

Before

UPPER TRIBUNAL JUDGE WARR

Between

BHAVNABAHEN MITULBHAI PATEL (FIRST APPELLANT)
MITULBHAI RAMANBHIA PATEL (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: The appellants did not appear and were not represented
For the Respondent: Mr E Tufan

DECISION AND REASONS

1. The appellants are citizens of India. The first appellant was born on 23 February 1976 and her husband, the second appellant, was born on 27 November 1975. The second appellant is the dependant of the first appellant in this case and accordingly the outcome of his appeal depends on the outcome of his wife's appeal.

2. The First-tier Judge records that the appellants originally requested an oral hearing for their appeals and the matter was duly listed on 22 June 2016. However, in a letter from the appellants' then representatives it was

stated that the appellants no longer wished to have an oral hearing and accordingly the matter was dealt with on the papers at their request.

3. The position was similar in the Upper Tribunal. The appeal was listed for an oral hearing on 2 May 2017, but on 25 April 2017 the Upper Tribunal was requested to decide the appeal in the absence of the appellants.

4. I deem it appropriate to proceed with the matter in the absence of the appellants at their request, bearing in mind the provisions of Rule 38. It is in the interests of justice to proceed.

5. The principal appellant had made an application on 15 August 2014 for leave to remain as a Tier 4 (General) Student. On 24 July 2015 the application was refused on the basis that the appellant had not provided a valid Confirmation of Acceptance for Studies (CAS).

6. The First-tier Judge referred to **EK (Ivory Coast) [2014] EWCA Civ 1517** and concluded his determination as follows:

> "**13.** **EK Ivory Coast** makes it clear that there is no duty on the respondent to follow up an application and the circumstances surrounding when a CAS is either invalid or has not been issued. The first appellant's case involved a similar circumstance whereby it was up to her to provide evidence that she was in possession of a valid CAS and she clearly failed to do this despite being granted 60 days by the respondent through a letter to her dated 16 March 2015 (Pg 19AB), to show that she had obtained a valid CAS. It did not follow that the respondent was therefore required to either grant leave or follow up why the appellant did not provide a valid CAS. The first appellant clearly could not meet the requirements of the Immigration Rules by not providing a valid CAS in her name, therefore it followed that her application fell to be refused.
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> **14.** The facts in the first appellant's case are very clear. She was granted 60 days to arrange another CAS following difficulties with the sponsorship licence of her original educational institution so in all, the respondent has acted properly and fairly at all times and it is the appellant's own doing that she has not managed to secure a valid CAS during the extensive 60 day period granted to her for this purpose. In other words, the respondent has already exercised the discretion vested in her under her existing policies by granting the appellant a grace of 60 days and she is under no obligation to do more in this instance.
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> **15.** I noted a letter from the appellants' bundle index that she has apparently made an application for a Derivative Right of Residence. The Certificate of Application was provided at pages 21 to 24 of the appellants' bundle. I have no other details about this application and whether the respondent has made a decision in this as yet. This of course does not prevent the current

> matters I am considering in this decision being decided, and there was no application for these matters to be adjourned until a later date whilst the outcome of the outstanding Derivative Right of Residence application is awaited. That is a different matter and it does not affect the decisions I have made in these appeals, and is something that those representing the appellants' must pursue separately outside the scope of these appeals."

7. The judge noted that Article 8 had not been raised and dismissed the appeals. In the grounds of appeal from the decision it was claimed that the appellant had not been given a fair opportunity of 60 days to vary her application in compliance with **Patel (revocation of sponsor licence – fairness) India [2011] UKUT 00211 (IAC)**. The appellant had not been provided with a certified copy of her passport and accordingly could not obtain sponsorship from another licenced Tier 4 sponsor.

8. Permission to appeal was refused by the First-tier Tribunal on 28 October 2016 on the ground that the 60 day policy had been applied and the appellant did not seek an extension of time to vary her application or suggest to the respondent that she had any difficulties in obtaining a CAS in that time. Instead she had made a wholly different application under the EEA Regulations, which at the date of the hearing had not been the subject of a decision. Article 8 had not been raised in the grounds of appeal. The application was renewed on 18 November 2016 and permission to appeal was granted on 13 March 2017, although it was acknowledged that it was not apparent that the argument now being relied upon had been put to the First-tier Tribunal.

9. The respondent filed a response on 23 March 2017. It was noted that the appellants had initially sought an oral hearing, but in the end had decided to have the case proceed on the papers:

> "They had every opportunity to put their case to the tribunal but now rely on evidence and an argument not advanced before the judge. The Secretary of State considers that this is a cynical abuse of the appeals process by the appellant[s]."

10. The respondent did not accept there was any failure to follow the policy correctly, or if there was, that it was in any way material. There was no evidence that the appellants were in any way disadvantaged by any such failure or took any action to resolve the situation themselves. An oral hearing was requested.

11. Mr Tufan submitted that the letter issued to the appellants was in accordance with the law. There was no dispute that the first appellant had been given 60 days to seek another sponsor. The grounds of appeal before the First-tier Judge had not referred to the issue. At the eleventh hour it was argued that the letter did not conform to the Secretary of

State's guidance. It was said there was no certified copy of the first appellant's passport and therefore she could not apply to another sponsor.

12. There was no evidence that the first appellant had approached any other sponsor and she could have requested a copy of her passport if it was missing from the decision letter.
13. Mr Tufan referred to an archived copy of the letter sent which said that certified copies of the documents had been sent to the representative with "Patel letter". The documents had been sent. If for any reason they were missing the appellants could have requested a certified copy. The appeals should be dismissed.

14. At the conclusion of the submissions I reserved my decision. I remind myself that I can only interfere with the decision of the First-tier Judge if it was materially flawed in law.

15. The point now taken was not argued before the First-tier Judge. The grounds of appeal filed by the first appellant make no reference to any complaint about the 60 day letter. The argument then put forward appears to have been that the application made on 15 August 2014 should not have been decided at all and it had been overtaken by the derivative residence card application. The judge dealt with this aspect in paragraph 15 of his decision and I have set this out above. No complaint about this aspect of the decision of the First-tier Judge was advanced in the grounds of appeal from that decision. The point now taken was not advanced at any stage until after the judge's decision.

16. There are circumstances in which a judge will be bound to deal with points notwithstanding they have not been raised in the grounds of appeal. However, I am not satisfied that there was any "**Robinson** obvious" error in this case – see **R v Secretary of State ex parte Robinson [1997] Imm. A.R. 568**.

17. In any event, as Mr Tufan submitted, the Secretary of State's evidence is that the proper material was sent out. If by any mischance the certified copy of the passport had not been enclosed it was open to the first appellant to request it.

18. The appellants have chosen not to attend the Tribunal hearings at either level. The points made in the response by the Secretary of State are entirely apposite.

19. For the reasons I have given, the appeals of the appellants are dismissed and the decision of the First-tier Judge is confirmed.

Anonymity Direction

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

TO THE RESPONDENT

FEE AWARD

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

Signed Date 15 May 2017

G Warr,
Judge of the Upper Tribunal