



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/00057/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 25 January 2018**

**Decision and Reasons
Promulgated
On 14 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

**REHAN AHMED
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Himself

For the Respondent: Ms J Isherwood (Home Office Specialist Appeals Team)

DECISION AND REASONS

1. This is the appeal of Rehan Ahmed, a citizen of Pakistan born 1 February 1984, against the decision of the First-tier Tribunal of 6 April 2017 dismissing his appeal against the refusal of variation of leave as a student on 9 June 2015.
2. The Appellant arrived in the UK in 2011 to pursue business studies. He completed Diplomas at Level 4 and Level 5 in 2012 and 2013, and then began his studies at Blake Hall College at degree level. The application of 29 November 2013 leading to this appeal was for an extension of leave to study at Blake Hall in order to complete that qualification. He learned that the college had lost its licence before his application was finally determined, and wrote to the Home Office in November 2014,

February 2015, and March 2015, asking for a short grant of further leave in order to make an application to a new college. He received no reply from the Home Office until the refusal letter came.

3. The application was refused because
 - (a) Blake Hall college was no longer on the Tier 4 Sponsor list at the time the decision maker determined the application, and accordingly the Certificate of Acceptance for Studies (CAS) supplied was invalid;
 - (b) A bank statement supplied to evidence his ability to maintain himself was thought to be false.
4. The appeal came on for hearing before the First-tier Tribunal, which noted that the burden of proof as to the allegation of dishonesty was on the Secretary of State, who had provided no evidence at all to back up her assertion that false documents had been provided. Accordingly she had failed to discharge the burden upon her. As to the validity of the CAS, it was accepted on all sides that the Sponsor college had indeed lost its licence by the date the application was considered.
5. The First-tier Tribunal found that the CAS had indeed been invalid, and accordingly dismissed the appeal. However, it noted that the Appellant had done all that he could to bring his difficulty to the Respondent's attention, and had indeed received an offer at Strathclyde University to study for a Master's Degree in International Management. It recommended that the Secretary of State grant him sixty days of discretionary leave to remain to give him an opportunity to regularise his immigration status, to recognise the unfairness of the situation that had arisen.
6. Grounds of appeal contended that the First-tier Tribunal, given its finding that the circumstances leading to the Appellant's plight were unfair, should have allowed the appeal in order to give him a period of leave in order for him to find a new Sponsor.
7. The First-tier Tribunal granted permission to appeal on 15 November 2017 on the basis that there had been manifest unfairness and that the First-tier Tribunal should have considered its powers to remedy this.
8. A Rule 24 response from the Secretary of State stated that the validity of the CAS was an end to the matter and that there was no human right to study in this country.
9. Before me, the Appellant was unrepresented, and there was a brief discussion as to the wisdom of an adjournment for him to find a lawyer. However, given my initial view of the lack of fairness of the proceedings so far, I considered it appropriate to determine the appeal, as he would not be prejudiced.

10. I enquired as to why it was that the attention of the First-tier Tribunal had not been drawn to the well-known policy of the Secretary of State which is intended to protect the position of students whose extension applications become invalid due to the revocation of a Sponsor's licence in circumstances where no blame attaches to them. Ms Isherwood was unable to explain the reason for this. Nevertheless she maintained that there was no material unfairness here, as the Appellant had had the opportunity to complete his studies in any event.

Findings and reasons

11. Although this decision post-dates 6 April 2015, it is expressly not one to which the new "relevant" provisions of the Nationality Immigration and Asylum Act 2002 have application; because the application was made other than on human rights grounds and prior to 6 April 2015. The Immigration Act 2014 (Commencement No. 4, Transitional and Saving Provisions and Amendment) Order 2015 inserts Article 9(1)(c)(iv) into Commencement Order No. 3 such that the "saved" provisions are preserved in relation to "a decision made on or after 6th April 2015 ... to refuse an application made before 6th April 2015 ... to vary a person's leave to enter or remain and where the result of that decision is that the person has no leave to enter or remain ... unless that decision is also a refusal of an asylum, protection or human rights claim."
12. The relevant Home Office Guidance around the time of the Appellant's application in relation to applications for leave to remain under the Tier 4 Student category sets out:
- "Where the applicant was assigned a CAS by the sponsor before they were removed from the sponsor register, the applicant can apply to extend their leave. ...
2. Where the application does not meet the requirements, refuse it.
3. Where it does meet the requirements, put it on hold. ...
5. If the student's application has been held and the sponsor's licence is revoked, and the student has been a bona fide student and did not participate in the practices which led to the revocation, the options for action depend on the leave that they have:
- If they still have at least 60 days permission to stay remaining, you must curtail their leave so that it will expire once the period of 60 days has run out. During this 60 days they can seek a new CAS from a different sponsor and either vary their application, make a new application or leave the UK. If their permission to stay runs out whilst they are waiting for a decision on their application you must delay the refusal of their application for 60 days to allow them to seek a new CAS from a different sponsor and vary their leave."
13. One appreciates that the precise wording of the Guidance may have changed from time to time, but Ms Isherwood did not suggest that the summary I provided to her at the hearing was anything other than accurate, which is reflected in the version found above.

14. The Secretary of State is under a duty to bring relevant Guidance to the attention of a Tribunal hearing the appeal. As was stated in *Mandalia* [2015] UKSC 59 at [19]: “irrespective of whether the specialist judge might reasonably be expected himself to have been aware of it, the Home Office Presenting Officer clearly failed to discharge his duty to draw it to the tribunal's attention as policy of the agency which was at least arguably relevant to [the] appeal”. That is so whether or not the Guidance is relevant on the preferred case put by the Secretary of State: it is its *potential* relevant that is decisive: *UB (Sri Lanka)* [2017] EWCA Civ 85.
15. In the majority of the Court of Appeal in *EK (Ivory Coast)* [2014] EWCA Civ 1517, Sales LJ stated, at [38], that whereas in general fairness did not necessarily require an applicant to be advised of matters of which he was unaware before a decision was made in reliance upon them, nevertheless there might well be unfairness where “there had been a change of position of which the Secretary of State was aware, and indeed which she had brought about, in circumstances in which the students were not themselves at fault in any way, but had been caught out by action taken by the Secretary of State in relation to which they had had no opportunity to protect themselves”. That scenario is precisely the case here.
16. It seems to me that the Appellant had done all he could reasonably be expected to do, by the series of letters he had written to the Respondent expressly stating that the college's licence had been revoked, to require the Respondent to consider that policy. Accordingly the Appellant should have received, rather than an outright refusal, a sixty day grace period to make a further application supported by a new Sponsor if he was able to find one.
17. The policy does not differentiate between the circumstances of a person who subsequently completes the next course of studies upon which they intended to embark, and one who does not. Indeed it is difficult to see that this would be relevant to the policy's application, given that it is intended to operate from the time that a decision is made on the present application, which necessarily rules out taking account of later developments.
18. The failure to bring this policy to the attention of the First-tier Tribunal led it into a material error of law, rendering the proceedings unfair. The very unfairness that it identified as relevant to a recommendation outside its statutory powers was in fact capable of leading to a decision in the Appellant's favour, within its jurisdiction.
19. This being an appeal under the “saved” provisions of the Nationality Immigration and Asylum Act 2002, the appropriate disposition of the matter is to allow the appeal on the basis that the Secretary of State's decision was not in accordance with the law. The Appellant has been treated unfairly because of the failure of the Secretary of State to

implement the relevant policy to ameliorate the unfairness occasioned by the Appellant's Sponsor losing its licence shortly before his application was considered so depriving him of the benefit of a valid CAS. Given his course of studies has moved onwards since the date of application and decision, the Appellant should consider whether he should vary that application to something more befitting his present circumstances. That is a matter for him, and would be a decision better taken with the benefit of legal advice.

Decision:

The appeal is allowed.

The Appellant's application for an extension of leave to remain remains outstanding before the Secretary of State.

Signed:

Date: 25 January 2018

A handwritten signature in black ink, appearing to read 'M. A. Symes', with a long, sweeping underline that extends to the left and then curves back under the signature.

Deputy Upper Tribunal Judge Symes