



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/01208/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 14 March 2018
Ex tempore judgment**

**Decision & Reasons
Promulgated
On 13 April 2018**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

**MR VIJAY BHATTI
(NO ANONYMITY ORDER IS MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance and not represented
For the Respondent: Ms Z Ahmad, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India born in 1992. He arrived in the UK on 12 October 2010 with entry clearance as a Tier 4 Migrant. On 21 July 2014 he made an application for further leave to remain in that capacity, but the application was refused in a decision dated 23 February 2016.
2. The respondent's decision refusing the application can be simply explained. The appellant needed a Confirmation of Acceptance for Studies ("CAS") but he did not have one. The respondent's decision refers to no CAS reference number having been provided which is synonymous with no CAS having been obtained. Accordingly, the appellant was unable to meet a fundamental aspect of the Rules and his application was refused. The

maintenance requirement of the Rules under Appendix C was not assessed corresponding with the fact that the appellant was unable to meet the main requirement of the Rules.

3. The appellant appealed against the respondent's decision and his appeal came before First-tier Tribunal Judge Devittie at a hearing on 3 October 2017. Judge Devittie dismissed the appeal under the Immigration Rules on the basis that the appellant had failed to submit a CAS. He did not however, go on to consider Article 8 of the ECHR, a matter to which I shall return momentarily. For the avoidance of doubt, it seems to me to be clear that the appellant did then have a right of appeal which he would not have now because the changed appeals regime was not in force at the time of the appellant's application in 2014. Nothing turns therefore, on any issue of validity or jurisdiction.
4. Judge Devittie set out verbatim the respondent's decision. He also set out the appellant's grounds of appeal which are to the effect that the respondent could/should have asked him to provide further documents, and asserting that the decision is not in accordance with the law. Argument in relation to the common law duty of fairness was raised. At [4] of his decision Judge Devittie said as follows:

“In considering this appeal I bear in mind that it is for the appellant to show on a balance of probabilities that he satisfies the requirements of the immigration rules. It is common ground that the appellant failed to submit a CAS, as required under the immigration rules, with his application. He has not advanced any basis upon which this Tribunal may be minded, for reasons of fairness, to grant him further time within which to obtain a CAS. In my opinion this appeal is wholly devoid of merit and must be dismissed.”

5. In the appellant's grounds of appeal to the Upper Tribunal, which I summarise, it is asserted that Judge Devittie did not look into the reasons as to why no CAS was provided, those reasons being that the respondent had closed all the colleges. It said in the grounds for permission that he made several attempts to obtain a CAS but then their licences were revoked by the respondent. It was unfair of the respondent not to give him more time to find a Tier 4 sponsor, it is argued. It is further asserted that it was beyond his control that all the Tier 4 sponsor colleges were closed by the respondent and the respondent should have contacted him to request a CAS prior to refusing the application.
6. It is next argued that Judge Devittie failed to consider his private life in the UK as he has “strong friendship with my friends who have become like family members to me. Also I did provide sufficient evidence to confirm my relationship with my friends.” He points out that he has been in the UK for over seven years but argues that Judge Devittie failed to take that into account. Reference is made in the grounds to what is described as a “fundamental abuse of power by the Home Office”. The appellant further asserts that his friends in the UK support him mentally, emotionally and financially. He has family in India but they are not able to support him like his friends in the UK do. He states that he understands his civic duties and he has never been in trouble with the authorities.

7. The appellant did not appear for the hearing before me today, and indeed did not appear before the First-tier Tribunal. I am satisfied that he was given notice of the hearing to the address which is in fact the same address that he had at the time of the hearing before the First-tier Tribunal. Therefore, I decided to proceed in his absence pursuant to Rule 38 of the Tribunal Procedure (Upper Tribunal) Procedure Rules 2008.
8. In submissions on behalf of the respondent before me Ms Ahmad referred to the relevant paragraph of the Immigration Rules that applied at the time of the decision before the First-tier Tribunal. It was submitted that even today there is no CAS provided by the appellant. The proposition on behalf of the respondent was that even now, when he could have provided a CAS, perhaps because s.3C leave under the Immigration Act 1971 would have allowed him to obtain a CAS from another college, he had not done so. In any event, on the basis of the authorities to which I was referred, there was no unfairness.
9. In relation to Article 8, the appellant was unable to show compelling reasons as to why any consideration of Article 8 outside the Rules should prevail in terms of the appeal being allowed under Article 8.
10. I am not satisfied that there is any error of law in the decision of Judge Devittie, or at least any that is material. The simple fact of the matter is that the appellant was required by reason of paragraphs 245ZX(c), and 115A of Appendix A, to provide a valid CAS in order to succeed in his application for further leave to remain. That was a fundamental requirement of his application which he failed to meet. The contention that there was unfairness in the respondent's decision is devoid of any merit.
11. Ms Ahmad helpfully referred me to three decisions under the name of *Patel*. The first is a decision of the Upper Tribunal, *Patel (revocation of sponsor licence - fairness) India* [2011] UKUT 00211 (IAC). That was a case which dealt with circumstances where a sponsor's licence was revoked. The guidance given in that case is to the effect that where a sponsor licence has been revoked by the Secretary of State during an application for variation of leave and the appellant is both unaware of the revocation and not party to any reason why the licence has been revoked, the Secretary of State should afford an appellant a reasonable opportunity to vary the application by identifying a new sponsor before the application is determined. It then goes on to refer to the period of 60 days. That, I think, subsequently found its way into policy on behalf of the Secretary of State to afford an applicant who had initially on an application provided a valid CAS reference number, but thereafter the sponsor licence was revoked, a period of 60 days in which to find a new sponsor. That is however, far removed from the circumstances of this appellant. He provided no valid CAS reference number at all in support of his application and his application therefore was bound to be refused.
12. Ms Ahmad also referred me to a decision of the Court of Appeal in *Patel & Anor v Secretary of State for the Home Department* [2018] EWCA Civ 229. I was referred in particular to [28] which I quote as follows:

“But there is an exception to the general rule, when public law fairness requires a period of grace for an individual to identify a new sponsor; but the authorities make clear that that is confined to cases in which the problem that has arisen was of the Secretary of State’s own making, e.g. if the Secretary of State revokes a sponsor’s licence or a student’s CAS.”

Further, at [31] the court said:

“Therefore, where there is no valid CAS, the Secretary of State is entitled to refuse an application for leave dependent upon a valid CAS, without making any further enquiries, unless the refusal stemmed from her own actions or omissions.”

I cannot see any validity to the argument that the respondent’s actions in revoking licences of colleges which presumably do not achieve appropriate standards to be on the approved list of sponsor colleges, in any way compromises the fairness of the respondent’s decision to refuse the application for leave to remain by reason of the appellant not having a valid CAS. It cannot be said that the respondent was responsible for the fact that the appellant does not have a CAS. It is the appellant’s responsibility to find a sponsor that does have a sponsor licence and that would be able to provide a suitable vehicle for a college course with a valid CAS. No issue of unfairness arises at all.

13. So far as Article 8 is concerned this is the issue in relation to which I used the words “material” when I said that there was no material error of law in the decision of Judge Devittie. The reason I say that is this: Judge Devittie did not consider Article 8 in his decision. In my judgement he ought to have done so because Article 8 is raised in the appellant’s grounds of appeal. However, what the appellant says about Article 8 is devoid of any substance. It is simply asserted in the grounds before the First-tier Tribunal that the Secretary of State had not given any consideration to his Article 8 rights. How Article 8 could have impacted on the Secretary of State’s decision is not explained in the grounds. It is not evident either, that any evidence was put before Judge Devittie which supported any contention that the decision to refuse him leave to remain compromised his private life rights under Article 8 in any respect whatsoever.
14. It is to be remembered that the appellant came to the UK as a student in 2010. He must have realised that he was here on a temporary basis only. It has often been said that the mere fact of wishing to pursue a period of study does not of itself, without more, engage Article 8. Whilst it may be that the appellant has established friendships in the UK, even if Judge Devittie had gone on to consider Article 8 in terms of the appellant’s private life whether within or outside the Rules it is inconceivable that he could have allowed the appeal on that basis. That is aside from the fact, as I have already suggested, that no evidence in relation to the appellant’s private life in the UK was in fact before Judge Devittie. In those circumstances, even if it could be said that there was an error of law in his failure to consider Article 8, any error of law in that respect is not material.
15. I conclude my reasons by referring to the last of the cases that Ms Ahmad referred me to; a decision of the Supreme Court, *Patel & Ors v Secretary*

of State for the Home Department [2013] UKSC 72, in which the court said at [57]:

“It is important to remember that Article 8 is not a general dispensing power. It is to be distinguished from the Secretary of State’s discretion to allow leave to remain outside the rules, which may be unrelated to any protected human right ... The opportunity for a promising student to complete his course in this country, however desirable in general terms, is not in itself a right protected under article 8.”

16. That quotation is illustrative of the limits to which Article 8 can be deployed in support of an appeal on private life grounds for a person who wishes to pursue studies, but in fact it goes beyond the appellant’s circumstances because there is nothing in the appellant’s evidence provided either to the Upper Tribunal or to the First-tier Tribunal in terms of what loss of prospects there was in terms of his studies, or indeed in terms of any promise that he had or has as a student.
17. Accordingly, the decision of the First-tier Tribunal did not involve the making of an error on a point of law. Its decision to dismiss the appeal therefore stands.
18. After this hearing, a letter dated 29 March from the appellant's (now) solicitors, states that "We now have instructions from the appellant to withdraw the appeal with a view to submitting a fresh application. We therefore request the tribunal to withdraw the said appeal."
19. By rule 19 of the Tribunal Procedure (Upper Tribunal) Rules 2008, a party may withdraw its case before the Upper Tribunal. There is no provision, as such, for a party to withdraw its appeal. In addition, The Tribunal must give its consent to the withdrawal.
20. I do not consent to the appellant's request to withdraw his case (and thus his appeal). Whilst it is the case that a decision is not final until promulgated, in this case I gave an oral judgment at the hearing, dismissing the appeal. I do not consider that in the circumstances I have the power to, in effect, reverse the decision that I have already made. In addition, the appellant failed to attend the hearing and gave no explanation for having done so. A timely application to withdraw a party’s case is one thing, it is quite another for such an application to be made not only post-hearing, but significantly post-hearing.
21. Consent to withdrawal of a party’s case is a discretionary matter. I decline to exercise my discretion to allow the withdrawal of the appellant's case.

Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law such as to require its decision to be set aside. Therefore, its decision to dismiss the appeal stands.

Upper
11/04/18

Tribunal

Judge

Kopieczek