IN THE UPPER TRIBUNAL

JR/13672/2016

Field House,
Breams Buildings
London
EC4A 1WR

30 May 2018

THE QUEEN
(ON THE APPLICATION OF)
YOKE MUN KUM

Applicant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

BEFORE

UPPER TRIBUNAL JUDGE ALLEN

- - - - - - - -

Mr D Bazini, instructed by David Tang & Co Solicitors appeared on behalf of the Applicant.

Mr Z Malik, instructed by the Government Legal Department appeared on behalf of the Respondent.

- - - - - - - - - - - - - -

ON AN APPLICATION FOR JUDICIAL REVIEW

APPROVED JUDGMENT

- - - - - - - - - - - - - -

JUDGE ALLEN: In this case the applicant challenges the respondent's decision of 19 October 2016 refusing to grant her indefinite leave to remain in the United Kingdom.

1. The brief immigration history of the applicant is as follows. She was granted leave to enter the United Kingdom as a student on 12 June 2007 until 31 December 2008. She was granted further leave to remain as a student on 17 March 2009 until 31 August 2009. Thereafter she was granted further leave to remain as a Tier 1 (Post-Study Work) Migrant on 12 September 2009 until 12 September 2011, and subsequently she was granted further leave to remain as a Tier 2 (General) Migrant on 10 November 2010 until 1 October 2013. She was granted further leave to remain as a Tier 2 (General) Migrant on 12 September 2012 until 14 August 2015. She was granted further leave to remain as a Tier 2 (General) Migrant on 14 September 2015 until 14 November 2016.

2. The applicant applied for indefinite leave to remain as a Tier 2 (General) Migrant on 23 December 2015. The application was accompanied by a certificate of sponsorship issued by the sponsor, Andystar Ltd. Andystar's sponsorship licence was suspended by the Secretary of State on 9 February 2016 and revoked on 25 June 2016. The date of refusal, as noted above, is 19 October 2016 and was made on the basis that the mandatory requirements of paragraph 245HF of the Immigration Rules were not met. An application for administrative review was made on 31 October 2016 and refused on 28 November 2016.

3. The claim for judicial review was issued on 21 December 2016. Permission was refused on the papers by Judge Kopieczek on 28 March 2017, but, following oral renewal of the application, Martin Spencer J granted permission to apply for judicial review on 7 February 2018.

4. Paragraph 245HF of HC 395 provides so far as relevant as follows:

> "To qualify for indefinite leave to remain as a Tier 2 (General) Migrant or Tier 2 (Sportsperson) Migrant, an applicant must meet the requirements listed below. If the applicant meets these requirements, indefinite leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.
>
> **Requirements:**
>
> ...
>
> (b) The applicant must have spent a continuous period of 5 years lawfully in the UK, of which the most recent period must have been spent with leave as a Tier 2 (General) Migrant ...
>
> (c) The Sponsor that issued the Certificate of Sponsorship that led to the applicant's last grant of leave must:
>
> (i) still hold a Tier 2 Sponsor licence in the relevant category, or have an application for a renewal of such a licence currently under consideration by the Home Office; and
>
> (ii) certify in writing:
>
> (1) that he still requires the applicant for the employment in question for the foreseeable future,
>
> (2) the gross annual salary paid by the Sponsor, and that this salary will be paid for the foreseeable future,

(3) if the applicant is currently on maternity, paternity, shared parental or adoption leave, the date that leave started, confirmation of what the applicant's salary was immediately before the leave, and what it will be on the applicant's return, and

(4) if the applicant is paid hourly, the number of hours per week the salary in (2) or (3) is based on."

5. The first ground of challenge, set out by Mr Bazini in his skeleton argument and developed by him in oral submissions, is that the Secretary of State acted unfairly in refusing the applicant's application without giving her an opportunity, namely 60 days, to find another sponsor.

6. With regard to the decision of the Upper Tribunal in Islam and Pathan [2017] UKUT 369 (IAC) it was argued that this could be distinguished from the facts of the instant case as it concerned an application for further leave rather than indefinite leave and as a consequence different policy objectives applied. It was also the case that at the time of revocation in Islam and Pathan neither applicant had any leave, in contrast to the applicant in the immediate case. It therefore could not have fallen within the 60 days policy. But even in a case such as that, if the policy was not applied there was a denial of the opportunity to find another sponsor and vary leave, obtain another sponsor, get further leave and subsequently apply for indefinite leave to remain.

7. In Islam and Pathan a material distinction was drawn between Tier 2 and Tier 4 cases. It was argued that the purposes in an indefinite leave to remain case were very different. The point was the Secretary of State had recognised via the Rules that an applicant who had satisfied the Tier 2 requirements

would get indefinite leave to remain after five years and this was a recognition of the significance of a person with a Tier 2 visa to the economy and to UK society. This was to be contrasted with the position of a Tier 4 student who had obtained none of those benefits. There was no route to indefinite leave to remain for a student. The Rule therefore recognised the value and purpose behind indefinite leave to remain for a Tier 2 Migrant. For others the route was via a ten year long residence period.

8. It was right to say, as had been pointed out in Islam and Pathan, that fairness was context specific. That assumed that the information given to the Upper Tribunal in Islam and Pathan was correct, but it was argued that that was not the case. Reference was made to paragraph 22 of that decision and the evidence of Mr Jackson whose background was set out at paragraph 14. Among other things he had said that seeking another Tier 2 sponsor was not the specific reason for the existence of the 60 day provision. This was important as it fed into the Tribunal's conclusions at paragraph 26, which were largely based on the premise of difficulties in finding another worker within 60 days.

9. In fact the information provided was incorrect. It perhaps reflected the post Islam and Pathan policy guidance. The applications in that case had been made on 1 February and 2 September 2016 respectively. Mr Bazini referred to the relevant guidance that had been put in today. This made it clear that the 60 days was provided to give a Tier 2 Migrant a chance to find a new sponsor. That wording was not to be found in the more recent version of the policy and it contrasted with what the Upper Tribunal had been told in Islam and Pathan. It meant that all the other evidence about the purpose of the policies was unsustainable. The policy recognised that people would have decent prospects of getting

another job and it would not be too difficult administratively for the system to deal with it. There was no evidence from the Secretary of State to apologise or explain this change of policy and also it was to be questioned whether the points in Islam and Pathan, now the guidance had changed, held good for the new guidance. It was argued that they did not, as the Secretary of State had not been transparent with the court and had not explained that there had been a change of policy and the reasons for it.

10. The impression given by the witness statements in Islam and Pathan was as if there was a grand plan and purpose behind the distinction between Tier 2 and Tier 4, but that was plainly not right. There were no policy documents explaining this in Islam and Pathan and in any case, there had to be serious reservations about what was said and why in the statements.

11. It was argued that the reason for the distinction was in fact because of the decision of the Upper Tribunal in Patel [2011] UKUT 21 where it was held that where a sponsor licence had been revoked by the Secretary of State during an application for variation of leave and the applicant was both unaware of the revocation and not party to any reason why the licence had been revoked, he was required to afford an applicant a reasonable opportunity to vary the application by identifying a new sponsor before the application was determined, and to fail to do so would be unfair. The policy considered by the Upper Tribunal in Patel was very similar to the policy as it now is. It was argued that the initial policy had been extended because of the fairness requirement. The Upper Tribunal in Patel had made it clear that a 60 day period should be allowed, and the Tribunal was not persuaded as to the potential costs of not imposing a duty compared to the simple matter of sending out a letter. There had been a delay in making a decision in this case and that had led to the lack

of the benefit of the grant of indefinite leave to remain to the applicant.

12. Mr Bazini referred to paragraph 6 of the summary grounds of defence which set out an extract from the Tier 2 policy guidance applicable on 23 December 2015 which was the date of the applicant's Tier 2 indefinite leave to remain application. That said as follows at paragraph 261:-

> "261. Any Tier 2 applications submitted while the sponsor's licence is suspended will not be considered. We will hold the application until the suspension ends and then make a decision."

13. Mr Bazini disagreed with what was said at paragraph 9 in the summary grounds, in that there was no policy at the time, but there was one now. He argued that the respondent had not done what was set out at paragraph 9. Nor did he agree that the delay could only be arguably construed as referring to the period from the date of the licence revocation to the date of the refusal of the ILR application, as argued at paragraph 10 of the summary grounds. It could not reasonably be said to be reasonable or lawful to have delayed for the period of four months that had occurred. As had been pointed out in Patel, a simple letter would suffice. No explanation had been given for the four months delay. Under the policy the applicant should have been given 60 days as the guidance anticipated she would. As a consequence she had lost the opportunity. A 60 day letter meant that a person knew the time limits and could approach employers.

14. In his reasons for granting permission, Martin Spencer J considered there was support for the interpretation that the relevant date was the date when the application was submitted from paragraph 261 of the Tier 2 policy guidance which said as follows:-

> "Any Tier 2 applications submitted (emphasised) while the sponsor's licence is suspended will not be considered. We will hold the application until the suspension ends and then make a decision".

15. The application was made at a time when the licence was suspended. In the administrative review decision the reasons for the delay were given and it was admitted there that the case had been put on hold since the sponsor's licence had been suspended, as no decision could be made until the outcome of the suspension was known. It could be seen from paragraph 20.26 of the relevant policy for Tier 2 and 5 of the Points Based System Guidance for Sponsors put in today, that while the licence was suspended, if a migrant made an application supported by a valid COS assigned by the sponsor before the licence was suspended, an application would not be decided until the reason for suspension had been resolved. It did not say that the application would be put on hold if they were suspended after the application was made. This was the point made by Martin Spencer J.

16. As the policy was in its current form paragraph 19.14 entailed that the applicant would fall foul of that, but that policy did not apply at the relevant time.

17. Mr Bazini also referred to the processing times set out in the guidance at tab C of the policies bundle. It was said that customers applying in the UK for indefinite leave to remain could expect a processing time of six months, and it was said that if there was a problem with the application or if it was complex, then the respondent would write to explain why it would not be decided within the normal standard and would write within twelve weeks for the six month standard. That letter would explain what happened next. Again there had been a complete failure by the respondent to inform the applicant

about this, and also a failure to say that the employer's licence had been revoked. These were clearly common law fairness points. It was argued that it was unlawful not to deal with the matter within six months and unlawful that although they knew when the licence was suspended the application would be put on hold they had not told the applicant. The implication of the guidance at paragraph 19.9 was that the provisions of paragraph 19.9(b) would be put in effect fairly speedily and not in such a way as to deprive the applicant of the 60 days period. This was a very strong point of fairness.

18. As regards the PBS case law, a point on which Mr Malik relied in his skeleton, it was argued that this did not apply as it was not a question of near misses or a document nearly being correct or being missing: none of those matters applied to the issues in this case.

19. In his submissions Mr Malik also relied on points made in his skeleton argument, and he addressed the grounds specifically as follows.

20. With regard to ground 1 the point was made that Mr Bazini's submissions ignored the opening words of paragraph 245HF(c) in that it was a mandatory requirement for indefinite leave to remain as a Tier 2 (General) Migrant that the original sponsor, whose certificate of sponsorship had led to the last grant of leave must hold a licence and also confirm certain matters in writing. Therefore, giving an opportunity to the applicant to find an alternative sponsor would have been meaningless, and even if she had been able to find one and provide another certificate of sponsorship she would not have satisfied the requirements of paragraph 245HF(c). He relied, inter alia, on the decision of the Upper Tribunal in Parayatta (JR/9934/2016). The point was made there among others that it

would be pointless for a Tier 2 applicant for indefinite leave to remain to be offered a 60 day letter to explore an alternative sponsor, even if she could find one within the 60 day period, bearing in mind there is a 28 day advertisement notice requirement, because she is required to have the sponsor that issued the certificate of sponsorship that led to her last grant of leave, and that sponsor was required still to hold a Tier 2 licence in a relevant category. Thus, even if she had a 60 day letter enabling her to look for alternative employment she could not comply with the requirements in the Immigration Rules.

21. Mr Malik also argued that there was no reason to depart from Islam and Pathan. This was not an appeal from that decision, but in any event the point was irrelevant in light of the earlier point that he had made.

22. Even if one took the contrary view of Islam and Pathan, the guidance in Patel would not assist, bearing in mind that the applicant was required to be both unaware of the revocation and not party to any reason why the licence had been revoked. Here there was no suggestion or evidence that the applicant was not even aware of the revocation of the sponsor's licence. If a person decided to do nothing they could not point to the Secretary of State to give them the opportunity to get a sponsor. Mr Malik accepted there was no question of complicity in this case, but there was no evidence before the Secretary of State as to the lack of knowledge point.

23. In addition Mr Malik argued that the points made on the applicant's behalf undermined the points-based system scheme read as a whole. He referred to quotations from a number of authorities where it was said, among other things, for example, in Alam [2012] EWCA Civ 960 at paragraph 35 that:

> "The price of securing consistency and predictability is a lack of flexibility that may well result in 'hard' decisions in individual cases".

Fairness was context specific, and the PBS was the context and these authorities were relevant. The applicant's argument would risk the benefits of the scheme.

24. With regard to the policy, the Tribunal was referred to paragraph 22 in Islam and Pathan. The evidence was not misleading. The final sentence of what had been said by Mr Jackson had to be seen in context. Paragraphs 21 and 23 were also relevant in this regard, where reference was made to the purpose of enabling the migrant to sort out his affairs, make arrangements to leave the United Kingdom or submit an application for leave to remain, either in Tier 2 with another sponsor or in another immigration category. There were obvious differences between Tier 2 and Tier 4. If a student was in the middle of a course of study and the sponsoring college lost its licence you would expect them to complete their course elsewhere, but it was different under Tier 2 where a person had to work for a particular employer and if the employer no longer had a licence there was no basis of stay.

25. Mr Malik made the point that the policy relied on by Mr Bazini was not directed to indefinite leave to remain applicants but to applicants with existing leave to remain in the United Kingdom and although they had leave for more than 60 days it would be curtailed to 60 days to give them a chance to get a new sponsor and this was not inconsistent with paragraph 22 of Islam and Pathan. It did not say the reason for the provision was needing another Tier 2 sponsor, but had just said they would get a chance to get a new sponsor by reducing the period of leave to 60 days and the chance to sort out their affairs

and make arrangements to leave the United Kingdom. The policy did not apply. He agreed the policy was somewhat opaque with regard to the reference not reducing a period of less than 60 days further, but queried whether it assisted the applicant. There was a logistical difficulty with the applicant's argument. She still had six months' leave and if the leave was reduced to 60 days they would complain. It would not assist the applicant. It could not be said that where there was an indefinite leave to remain application pending and the licence was revoked they would have the opportunity to find an alternative sponsor. The applicant in any event had still had leave to remain for more than three weeks at the date of the refusal. There was no duty to give her an opportunity to find an alternative sponsor and make a fresh application. Ground 1 as a consequence must fail.

26. With regard to grounds 2 and 4, Mr Malik referred to the decision of the Supreme Court in Mahad [2009] UKSC 16, itself referring to what had been said in Odelola [2009] UKHL 25, and in particular paragraphs 24 to 26 in Odelola as to the approach to be adopted in such a case. Those matters were also addressed in Mr Malik's skeleton. In sum the point was that there needed to be a specific reference to the date of application for that to be the relevant date, in that the Rules would say so if that was so, otherwise it was the date of decision. Mr Malik argued that it would also be administratively unworkable, in terms of the further requirements of paragraph 245HF, for the Secretary of State to grant an applicant indefinite leave to remain notwithstanding her own knowledge that the sponsorship licence in question had in fact been revoked. He argued that this was also reflected in the relevant guidance. There was no basis to depart from the natural and ordinary meaning of the language of paragraph

245HF(c). This approach was endorsed by the Upper Tribunal in Parayatta.

27. With regard to the argument of unreasonable delay, again reference was made to Parayatta, at paragraph 58 in particular. There was no policy that the Secretary of State would make a decision within twelve weeks. There was no public law error if that target were not met. There was no guarantee of a decision within a particular timeframe. The licence had been suspended within weeks of the application being made and it was perfectly legitimate to wait and see the outcome before making a final decision. The licence had been revoked in June and the decision was in October, so there had been no undue delay by the Secretary of State. Even if it should have been done earlier, or the applicant informed of the decision earlier, this did not mean the ultimate decision was unlawful. There was no entitlement to relief in relation to such a matter. With regard to paragraph 20.26 of the policy, the applicant was not within that and it only applied where an application for leave to remain was made while the licence was suspended and that had happened after the application was made. Even if that argument was accepted, it did not help the applicant and the respondent had not said she would make a decision even if the licence was suspended. There was no unlawfulness.

28. By way of reply Mr Bazini argued that Parayatta was not binding. The point that a person who made an indefinite leave to remain application under the Rules would have to show that he had an employer etc, would suggest that they were not entitled to 60 days as it was indefinite leave to remain rather than limited leave to remain was wrong as it denied the opportunity for further leave to remain when it was no fault of that person that their sponsor had lost their licence.

29. As regards Mr Malik's point that the policy did not refer to indefinite leave to remain, it clearly referred to both limited leave to remain and indefinite leave to remain and that was irrelevant to the application in any event, as its wording had no reference and it was only concerned with a case where the sponsor's licence was revoked, and it was silent as to whether it applied to indefinite leave to remain or limited leave to remain and that could not be read into it. The contradiction as it was said to be at paragraph 60 of Parayatta was not made out. As could be seen from the wording of the Rule, an alternative to being the original sponsor was that they only had to have a renewal application currently under consideration, and that was sufficient for the grant of indefinite leave to remain so it could not validly be said that there had to be a valid licence in existence at the date of decision. It should also be noted from Parayatta at paragraph 64 that in that case the application was made after the sponsor's licence was suspended, so the case did not assist. Mr Bazini disagreed with the conclusions at paragraph 69 in Parayatta and argued that it missed the point. It was a case where the Secretary of State knew long ago that she had revoked the licence and needed to grant the 60 days period, and that was the law and whether it was indefinite leave to remain or limited leave to remain mattered not. With regard to paragraph 70 of Parayatta, the requirements of the Rules could be met as the person could apply for further leave and there was no need for there to be a licence at the date of decision as had previously been argued. There could be a further application which might be refused.

30. With regard to what Mr Malik said about Islam and Pathan, it could not simply be argued with no evidence as to what the caseworker meant. If in fact it did make a difference then there were questions over whether 60 days should be given in

non-revocation cases. This was an application case and a revocation case. It was within the guidance in Patel. The fact that the applicant had now said that she was not aware of the suspension of the licence could not have been evidence before the Secretary of State at the time of the decision. It was necessary to inform people and that was clear from Patel. The Secretary of State had failed to observe her legal duty to inform a person if a decision was not to be made within a fixed time. The applicant had had no reason to suspect that there was anything wrong. The position under the old and the new policies could be contrasted.

31. With regard to the proper approach in PBS cases, Mr Bazini relied on what had been said by the Court of Appeal in Mudiyanselage [2018] EWCA Civ 65. There was reference for example at page 314 in the context of PBS to the need for certainty and predictability, but there were no such issues in the way of the proper interpretation of the Rules and the policy in this case. It was not clear why the policy had been changed and there was no predictability or certainty and perhaps the decision might be a hard one for the Secretary of State in this instance. Emphasis was placed on paragraphs 44 and 45 and also paragraphs 48 to 51.

32. Mr Malik's argument with regard to Mr Jackson's evidence was unsustainable. It was clear from the guidance that the reason for the 60 days was to give a chance to find a new sponsor. There was no reference in that policy to the other points that Mr Malik had made as to the reasons for the 60 day provision. There was no excuse for the Secretary of State for failing to explain herself. It was not correct that the policy was not directed to people seeking indefinite leave to remain. It applied to revocation, whether it was indefinite leave to remain or further leave to remain. Three weeks after the refusal would not have been long enough to find a sponsor and

was unfair. It was not so clear-cut as to be a question of the date of decision rather than the date of application. The point was reiterated that it was possible to obtain indefinite leave to remain even if the sponsor no longer had a licence, if they had applied for a renewal. Therefore if the decision had not been unlawfully withheld the application would have been successful. Also it was argued that there would be a public law error if there was a failure to meet the standard set out in the guidance as to time lines, because of the failure to notify, the applicant had lost a period of further leave and the opportunity for indefinite leave to remain. There had been undue delay and a failure to follow policy, and the respondent had let time run down until the applicant could not benefit from the 60 days period. No explanation had been given. The decision was unlawful.

Discussion

33. The central point in this case is the requirement at paragraph 245HF(c) of HC 395 that, in the case of an application for indefinite leave to remain as a Tier 2 (General) Migrant, a sponsor that issued the certificate of sponsorship that led to the applicant's last grant of leave must still hold a Tier 2 sponsor licence in the relevant category, or have an application for a renewal of such a licence currently under consideration by the Home Office. Various other matters are specified thereafter at paragraph 245HF which must be certified by the sponsor and further requirements that exist for the provisions of the Rules to be satisfied.

34. Mr Malik's simple point is that the application cannot succeed, and that whatever points are made about policies, to which I shall come on in a moment, are entirely by the way. Mr Bazini argues that the Rule requires that the applicant meets the requirements of the points-based system rules at the

date of the application and that there is no dispute that the requirements of the Rules were indeed met at that date. He refers to the grant of permission by Martin Spencer J who considered it arguable that a proper interpretation of paragraph 245HF means that the time at which the respondent should consider whether the applicant meets the requirements for indefinite leave to remain is when the application is submitted and not when it is considered by the Secretary of State. He also considered that there was support for this interpretation arising from the respondent's Tier 2 policy guidance which provides as follows:

> "261. Any Tier 2 applications submitted (Martin Spencer's J's emphasis) while the sponsor's licence is suspended will not be considered. We will hold the application until the suspension ends and then make a decision."

35. Mr Bazini went on to argue that in this case suspension took place six weeks after the application was submitted and as such it would not have been in accordance with the guidance to suspend the decision until a revocation decision was made, and if that were not the case it would be difficult to see what the point of the guidance was in this regard. He went on to note what had been said in the administrative review decision that the reason for delay in processing the application was because of the decision maker awaiting the outcome of the suspension of the sponsor's licence. He argued that this was unlawful and contrary to policy or practice in that the decision should not have been delayed because the timing of the application was prior to suspension and so not caught by the guidance. He argued that as a further aid to construction the relevant Rules only refer to the fact that a Tier 2 licence must be held on making the application, but also that alternatively the employer may have an application for renewal

of the licence pending and that this allows for the grant of indefinite leave to remain in circumstances where at the date of application the licence was in existence, but also in circumstances where it has expired but a renewal application has been made. He made the point that there was thus no requirement for there to be a current licence at the time of the application, let alone the decision. In principle therefore, indefinite leave to remain could be granted with the application for renewal being refused at some later point.

36. Mr Malik, as I have noted above, attached weight to Mahad and Odelola in respect of his submission that the proper date on which paragraph 245HF depends is the date of decision. It was said in Odelola, quoted at paragraph 30 of Mr Malik's skeleton, that the most natural reading of the Rules is that in the absence of any statement to the contrary they will apply to the decisions the Secretary of State makes until such time as she promulgates different Rules. Mr Malik also pointed to an example at paragraph EX.1. of Appendix FM of a case which stipulated that the date for relevant requirements of that paragraph were required to be met as "the date of application". I see force in Mr Malik's point that the use of the word "still" would, in effect, be redundant if the Rule was intended to mean "hold" at the date of application. There is also substance to the point he makes that it would be surprising if the Secretary of State were required to grant an applicant indefinite leave to remain notwithstanding her own knowledge that the sponsorship licence in question has in fact been revoked.

37. The fact that paragraph 261 of the Tier 2 Policy Guidance makes it clear that Tier 2 applications submitted while the sponsor's licence has been suspended will not be considered, and a decision will not be made until the suspension ends does not, in my view, entail that a decision on an application made

prior to suspension can or will not be made similarly when the suspension ends. The specific provision made in the case where the application is made after suspension is made for the particular reasons relevant to that situation. It does not follow that it is not appropriately equally for the decision in a case such as the instant one to be made when it was in this case. Odelola is applicable here. The timing of the submission cannot be material in determining the point at which the Rules' requirements have to be met. With regard to Mr Bazini's point that in the alternative under paragraph 245HF(c)(i) the sponsor may have an application for renewal of a Tier 2 sponsor licence currently under consideration by the Home Office, and therefore there is no requirement for him to hold a licence at all, it is clear that there must have been a licence in the past, and that there be an application for renewal of such a licence currently under consideration. This in my view is properly read as no more than the setting out of an alternative basis upon which the requirements of the Rule can be met rather than indicating in some way that because the sponsor does not have to hold a Tier 2 sponsor licence at the time of the decision it means that the date of application is the relevant date. The Rule is specific in its terms, and I consider that it cannot be properly interpreted other than in the way put forward on behalf of the respondent by Mr Malik. It is clear that the sponsor in this case did not hold a Tier 2 sponsor licence in the relevant category at the time when the decision was made, and it has not been suggested that they had an application for a renewal of such a licence under consideration by the respondent at the time of the decision. Accordingly the requirements of the Rules are not met in this case.

38. As regards the issue of the policy, Mr Bazini relied upon certain words in the Tier 2 and 5 of the points-based system

guidance for sponsors that was in existence at the relevant date. Neither side put before me the policy referred to by Martin Spencer J and also considered by the Upper Tribunal in Parayatta. I have however relevant quotations from that policy.

39. It must be questionable whether a policy which is aimed at sponsors can be said to bite at all on the rights of migrants, in the absence of any parallel or similar provision in guidance to migrants, though that is not a point that Mr Malik took on behalf of the respondent. Rather, he argued that there was no reason to depart from the conclusions of the Upper Tribunal in Islam and Pathan, and the fact that the respondent's policy is to curtail leave to remain to 60 days in the case of migrants who have more than 60 days left of their leave at the time of the revocation decision does not mean that those who are in the applicant's position should also be given a further 60 days to find an alternative sponsor. He also, as noted above, argued that the applicant's argument undermined the scheme of the points-based system as a whole, and I have noted above references to the importance of security and consistency and predictability and the risk of hard decisions in individual cases that may result as being part of the price paid for this. Mr Malik, as I have also noted, argued that what was said in Islam and Pathan about the reasons for the 60 day policy held good, and that the reference to paragraph 19.9(b) of the sponsor's policy was not inconsistent with what had been said there. It is a point as Mr Bazini has said, that there has been no statement on the part of the respondent as to why the policy was subsequently amended when the reason for the 60 days, being to enable the migrant to have a chance to find a new sponsor, is no longer present. However I do not consider the absence of a statement

or explanation to be of any materiality to the issues in this case.

40. As I say, there does not appear to be a policy speaking to the migrant which gives reasons for the 60 days provision in the sponsor's policy. But it seems to me that the matter must in any event be dictated by what is contained in the Immigration Rule. It is clear from paragraph 245HF(c), as I have set out above, that the sponsor who issued the certificate of sponsorship that led to the applicant's last grant of leave must still hold a Tier 2 sponsor's licence. I have already decided that that relates to the date of decision, not the date of application. That is, in essence, in my view the end of the matter. Even if there is a 60 days period allowable to a migrant in circumstances where they still have 60 days or more of their leave remaining, that cannot avail them in the face of the wording of the Rule. If that period of time exists or such period of time which might enable them to find another sponsor, then again, as the Tribunal pointed out in Parayatta, that could not avail them either, because the sponsor is required to be the same as the one who issued the certificate of sponsorship that led to the applicant's last grant of leave. Quite why the policy for sponsors says what it does is unclear, but it is not a policy aimed at migrants, and I consider that although it does not expressly limit its application or context to cases other than those concerning indefinite leave to remain, it can only be said to be applicable in practice to cases that are not governed by paragraph 245HF, because of the specific wording of that Rule. No doubt the policy may have a role to play in other cases where the sponsor's licence is revoked and a 60 day period is granted, but in light of the specific wording of the Rule, it can in my view have no bearing on the particular circumstances of this case. Even if it did, the fact of the matter is that

the respondent did not seek to reduce the period of days left to the applicant at the time when the decision was made, although I accept Mr Bazini's argument that it would have been difficult if not impossible for that to be satisfied given the limited period of time of leave remaining. This is in my view an example of the kind of hard decision that may arise in individual cases as a consequence of the lack of flexibility of the points-based system. I have every sympathy with the applicant who in the circumstances of the timing of this case was left in a situation where she did not realise that the sponsor's licence had been initially suspended and subsequently revoked, until a time within three or so weeks of her leave expiring. But, as the Tribunal pointed out in Parayatta, that could not avail her because the Rule is clear on the point.

~~~0~~~~
~~~