



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/02496/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 18 July 2019

**Decision &
Promulgated**

On 10 September 2019

Reasons

Before

**MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE MANDALIA**

Between

**MR GUWINDER SINGH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Bellara, Counsel instructed by Louis Kennedy Solicitors

For the Respondent: Mr A Melvin, Home Office Presenting Officer

DECISION AND REASONS

Upper Tribunal Judge Mandalia

1. The appellant is an Indian national. He arrived in the United Kingdom in March 2012 with leave to enter as a Tier 4 (General) Student valid until 14 July 2014. On 2 July 2014 he made an application for leave to remain. That application was refused by the respondent on 9 June 2015. Before refusing that application, on 10 December 2014 the respondent wrote to the appellant informing him that on 6 October

2014, the Home Office had made a decision to revoke the licence of Cahro Academy Ltd and so the Confirmation of Acceptance for Studies (“CAS”) submitted by the appellant with his application, is no longer valid. The respondent went on to state:

“Before the final decision is made, and in line with our rules and guidance, we will suspend consideration of your application for a period of 60 calendar days.

During this 60-day period it is open to you to withdraw your application and submit a fresh application in a different category or to leave the United Kingdom....

However, if you wish to remain in the UK as a Tier 4 student, it is open to you to obtain a new CAS for a course of study at a fully licensed Tier 4 Educational sponsor and vary the grounds of your original application....”

2. The respondent gave two reasons for refusing the application on 9 June 2015. First, there had been deception used in relation to the application. The application was therefore refused under paragraph 322(1A) of the immigration rules. The respondent had received information from City & Guilds indicating that the reading, writing and listening tests taken by the appellant on 17 February 2014 at the London Institute of Management and Technology, had been cancelled by City & Guilds. The second reason for refusing the application was that the applicant had claimed 30 points under Appendix A of the immigration rules for a valid CAS, assigned by Cahro Academy Ltd, but the respondent declined to award the appellant 30 points under Appendix A of the immigration rules.
3. In referring to the appellant’s immigration history in that decision, the respondent simply says that “On 5 March 2012 you were granted leave to enter the UK as a Tier 4 student migrant until 14 July 2014”. In the section that deals with the points awarded to the appellant, the respondent states: -

“... The CAS that you submitted with your application, with reference number was assigned by Cahro Academy Ltd. The Tier 4 Sponsor register was checked on 16th February 2015 and Cahro Academy Limited was not listed as a Tier 4 Sponsor as of this date.

On 10 December 2014 you were informed of this and allowed 60 days to obtain a new sponsor and CAS, however you have not provided a new CAS within that period.

As such, you are not in possession of a valid CAS and so you have not met the requirements of the Rules. Therefore, no points have been awarded for your CAS”.

4. Before we turn to the decision of the Judge that is the subject of the appeal before us, we note from the papers before us that on 1 February

2016, the respondent appears to have issued a Notice of Immigration Decision. That is a Notice of Removal in which the respondent stated:-

“You are specifically considered a person who has overstayed their period of granted leave because you were issued with a student visa which was valid until 14 July 2014. You were landed in line with the visa on 05 March 2012. However, your leave was subsequently curtailed on 01 October 2013. You did not then attempt to regularise your stay until 02 July 2014”.

5. We referred to that decision and the contents of that Notice of Removal, but Mr Melvin who appears before us on behalf of the respondent, was unable to provide us with a copy of any decision made on 1 October 2013 to curtail the appellant’s leave to remain. He was unable to provide us with any information as to whether, and if so when, any such decision had in fact been made and served upon the appellant. That is unfortunate because an individual receiving a Notice of Removal in those terms might well have done what was being asked of them by the Secretary of State. That was, to leave the United Kingdom, when it is far from clear whether the leave to remain had been curtailed.
6. Whether or not the curtailment decision was served upon the appellant, on 2 July 2014, the appellant made an application for leave to remain in the UK as a Tier 4 (General) student and when that application was refused on 9th June 2015, he pursued his appeal before the First-tier Tribunal. The decision, if there was one, to curtail the appellant’s leave to remain is not referred to at all in the respondent’s decision of 9 June 2015.
7. In any event, the appellant’s appeal against the respondent’s decision of 9 June 2015 was heard by First-tier Tribunal Judge Lodge on 26 June 2017, and the appeal was dismissed for the reasons set out in a decision promulgated on 5 July 2017. We shall return to that decision again in a moment but before doing so, we deal with the way in which the appeal has come before us.
8. The appeal was dismissed by Judge Lodge and permission to appeal was refused by Judge O’Garro on 29 December 2017, and then by Upper Tribunal Judge Chalkley on 19 March 2018. Undeterred, the appellant filed a claim for Judicial Review (CO/1438/2018). At paragraphs [3] to [6] of the Grounds for Permission, the appellant claims:-

“3. In summary, the Appellant entered the United Kingdom as a Tier 4 Student and in July 2014, he made an application to remain in the United Kingdom as a Tier 4 student. The respondent refused the application on June 9th 2015 and set out two specific grounds for refusal. Firstly, it relied upon a letter of curtailment dated December 10th 2014. The Applicant claimed throughout that he never received such a notice and he emphasised this again in his witness statement which was served as part of the original grounds of appeal to the FTT.

4. The second issue raised by the Respondent centred upon a City & Guilds English language certificate. The applicant was alleged to have produced a false certificate and therefore had used deception.

5. The Appellant's appeal came before FTT Judge Lodge in the summer of 2017 and the FTT determination is, in essence, split into two parts. The Appellant attended the hearing, gave oral evidence and the Judge made the finding that the Respondent has not discharged the burden in relation to the issue of deception. The reasons for the decision are well reasoned and adequately set out in the determination. That issue is not the challenge.

6. However, the FTT found that the Respondent had properly served the curtailment notice in December 2014 by way of record delivery. At paragraphs 19 and 20 of the FTT determination, the Judge sets out his reasons for coming to that conclusion. "

9. It is apparent from the extracts cited above that the appellant refers to the respondent's letter dated 10 December 2014, as a "letter of curtailment" or "curtailment notice". In the Grounds for Permission, at paragraphs [11], the appellant refers to the relevant statutory framework for the service of a notice in writing relevant to the grant, refusal or variation of leave as set out in the Immigration (Leave to Enter and Remain) Order 2000. At paragraph [16], the issue is identified:

"The Court is asked to consider the following issues when determining whether the UT has erred in considering the issue of a material error of law. The question for the FTT was whether it is sufficient for the respondent to show that it had validly served notice of a decision upon an Applicant if a recorded delivery is signed for at the correct address by anyone else except the Applicant himself/herself?"

10. The grounds for permission also refer to the decision of the Administrative Court in R (Javed) [2014] EWHC 4426 (Admin), and the Upper Tribunal in R (Mahmood) -v SSHD (effective service - 2000 Order) [2016] UKUT 00057 (IAC). Those decisions concern the obligation to serve a notice in writing upon an individual, in circumstances where the respondent is exercising the power to grant, refuse or vary their leave.

11. On 13 June 2018, Mr Justice Turner granted permission to claim judicial review of the decision of the Upper Tribunal to refuse permission to appeal. In the observations made by Mr Justice Turner, he notes as follows:-

"The requirements of the Civil Procedure Rules Part 54.7A(7) are satisfied. It is arguable, with reasonable prospect of success, that the UTT and FTT were wrong in law relating to the effectiveness of service of notice of curtailment of leave.

The issue concerning service raises an important point of principle."

12. The decision of Upper Tribunal Judge Chalkley refusing permission to appeal to the Upper Tribunal was quashed. Permission to appeal was granted, and the matter comes before us to determine whether there is an error of law in the decision of the FtT Judge, and if there is, to remake the decision.
13. We make one very important observation that the parties should take heed of. It is singularly unhelpful, as has happened in the context of this appeal, for both the Secretary of State and the appellant to use terms that relate to entirely different matters, interchangeably. Here, the Secretary of State and the appellant's representatives use the terms "curtailment" and "60-day letter" as being one of the same things. It is regrettable that the representatives do so, because that is unhelpful to the Courts and Tribunals that determine appeals such as this, and on any view, cannot inspire confidence that an individual's immigration matters are being dealt with, with the care that they should receive. We should not need to point out to representatives that there is a very important distinction between what has now come to be known as 'a 60-day letter' and a decision that 'curtails' an individual's leave. We have set out the background to this appeal at some length, and it is plainly apparent that the appeal here, does not concern the effectiveness of the service of a Notice of Curtailment. The respondent did not refer to any decision to curtail the appellant's leave in the decision of 9 June 2015. This appeal centred upon a letter sent to the appellant informing him that the respondent will suspend the consideration of his application for a period of 60 calendar days, so that he could take steps to withdraw his application or vary it.
14. The parties' representatives should not need to be reminded that a Notice of Curtailment has an impact upon the immigration status of an individual. It is a decision that operates to vary or by curtailment, alter, any leave to enter or remain that an individual enjoys. It is a decision that has serious consequences upon the immigration status of that individual. That is very different to the consequences and status of a 60-day letter. A 60-day letter is given by the respondent to an appellant, not because it has any direct impact upon the immigration status of that individual, but as a matter that arises out of the duty of fairness. It allows an applicant to put matters that might otherwise weigh against them, in order, before a decision is made. Here, the 60-day letter was sent to the appellant because the CAS that was relied upon by the appellant was valid at the time that he made his application on 2 July 2014, but by the time that the application was considered by the respondent on 16 February 2015, the Cahro Academy Ltd was not listed as a sponsor on the sponsor register. That would inevitably have resulted in the application being refused, but as a matter of fairness, the appellant was provided with a window of opportunity to vary his application and find a new Tier 4 Education Sponsor, if he wished to do so. It is clear from the observations that we make that the reference to the respondent's letter of 10th December 2014 as a "letter of curtailment" to which the Immigration (Leave to Enter and Remain) Order 2000 applies, was in fact misleading and

caused Mr Justice Turner to consider that, arguably, the FtT and Upper Tribunal were wrong in law relating to the effectiveness of service of the notice of curtailment of leave, when in fact no such issue arose.

15. With that observation made, we return to the decision of First-tier Tribunal Judge Lodge. The Judge notes, at paragraph [5], that the appellant's grounds of appeal have been considered. These assert that the respondent has failed to establish the allegation of dishonesty with independent supporting evidence; and second, there is no evidence of a 60-day letter or the service of the 60-day letter as alleged. The first ground was resolved in favour of the appellant. The Judge found, at paragraph [17], that he could not be satisfied that the respondent has discharged the burden of proving dishonesty on the part of the appellant.
16. The second of the grounds of appeal (*i.e. the 60-day letter*), was dealt with by the Judge at paragraphs [19] and [20] of the decision. The Judge considered the copy of the letter that was provided to the Tribunal by the respondent. In reaching his decision the Judge also had regard to the evidence relied upon by the respondent of the 'Track and Trace' by Royal Mail, which confirms that the item was delivered from the Wolverhampton delivery office on 13 December 2014, and was signed as having been received by an individual signing as "A Kaur". The question for us is whether it was open to the Judge to reach the conclusion that the document was delivered to the appellant's address and received by the appellant. In his submissions before us, Mr Bellara has been unable to identify any requirement in law that requires a 60-day letter to be served upon the appellant in any particular way, before it has legal effect. There is for example, no requirement that such a letter must be sent to the appellant by way of recorded delivery. It is sufficient for it to be sent to the appellant's address as known to the respondent. It was in our judgment open to the Judge, having considered the evidence that was before the Tribunal, to conclude that the signature on the Royal Mail track and trace does not appear to be the appellant's, but nevertheless to be satisfied that the letter was delivered to the appellant's address. It was open to the Judge to reject the appellant's claim that he did not receive the letter. There is nothing irrational or unreasonable about that finding made by the Judge. It was a finding that was open to the Judge on the evidence before him.
17. In any event the Judge noted, at paragraph [20], that even if he did not receive the letter it must have been plain to the appellant that the college where he was purportedly studying, the Cahro Academy Ltd, was not a functioning institution. Mr Bellara submits that without a 60-day letter, the appellant could not find another Educational Sponsor but that is simply incorrect. It was open to the appellant to secure an alternative sponsor at any time when for all intents and purposes, he had leave to remain in the UK, without the need for any letter from the respondent.

18. It follows that in our judgment, the decision of Judge Lodge is not tainted by a material error of law capable of affecting the outcome of the appeal, and the appeal before us is dismissed.

The Vice President, Mr C M G Ockelton

19. I add only this. As Judge Mandalia pointed out, this is a case in which an application for permission appears to have been made and refused, and then there was an application for judicial review of the Tribunal's refusal to grant permission. As we have decided, there is simply nothing in this appeal which could cause anybody to think that the Judge erred in law. What is of great concern is that in the grounds of judicial review, professionally prepared and sent to the court under cover of letters from Louis Kennedy, a firm of solicitors, it is stated several times that there was a letter of curtailment dated 10 December 2014. That letter is said to have been a specific ground of refusal, and in conjunction with that assertion, there is reference to the authorities, particularly the decision of Mr Garnham QC (as he then was) in R (on the application of Javed) v Secretary of State for the Home Department [2014] EWHC 4426 (Admin). To refer to a letter of curtailment, and then the authorities on the service of a letter of curtailment, not only was wholly misleading, wholly divorced from the facts, but also did in fact mislead Mr Justice Turner. For those reasons it is very likely that the Tribunal will, under the Hamid process, wish to hear in due course orally from the Senior Partner of Louis Kennedy Solicitors as to how he came to mislead the High Court in that way.

Notice of Decision

20. The appeal is dismissed, and the decision of First-tier Tribunal Judge Lodge shall stand.
21. No anonymity direction is made.

Signed
Upper Tribunal Judge Mandalia

Date

6 September 2019

TO THE RESPONDENT
FEE AWARD

We have dismissed the appeal and therefore there can be no fee award.

Signed
Upper Tribunal Judge Mandalia

Date

6 September 2019