Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/11468/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
on 4 September 2013	**on 12 September 2013**

Before

UPPER TRIBUNAL JUDGE PITT

Between

JOY KELEIBISA QUEEN IGBELABO

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Babarinde of Hatten Wyatt Solicitors
For the Respondent: Mr Tufan, Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge McGavin dated 9 July 2013 which dismissed the appellant's appeal against the refusal of leave to remain as a Tier 4 (General) Student.

Background

2. The appellant, who was born on 26 March 1981, is a citizen of Nigeria. She came to the UK as a student on 11 June 2006 and was granted leave to remain in that capacity until 30 January 2013. She applied for further leave to remain in time on 21 January 2013.

3. There is no dispute between the parties that at the time that the application was made, the appellant's college was suspended.

4. In addition, there is no dispute that the college was unable to issue the appellant with a Certificate of Acknowledgement of Studies (CAS) as required by the Immigration Rules when seeking further leave to remain as a student.

5. The application of 21 January 2013 was therefore made without a CAS. It was refused on 25 March 2013 solely because there was no CAS.

6. The appellant appealed that refusal. She maintained that the letter from her college that she had submitted with her application should have led the respondent to put her application on hold until the suspension of the college had been resolved, until the college had issued her with a CAS and then should have been allowed.

7. I was shown a copy of the letter from the college which was dated 17 January 2013. The original was on the respondent's file and I was satisfied that it was before the respondent at the time that the decision of 25 March 2013 was made although there is no reference to it in the refusal letter.

8. The letter states that the college was unable to offer a new CAS. It went on to state:

> "On further consultation with the UKBA we were advised that students should submit their CAS application with a cover letter explaining the College's situation and that these applications would be placed "on hold" until the situation has been resolved."

9. It is this part of the letter and what should have been done in the light of it that is really at the heart of this appeal.

Decision of the First-tier Tribunal

10. The appellant argued before the First-tier Tribunal that the respondent should not have refused her application without waiting for the outcome of the suspension of the college, following the "agreement" referred to in the college's letter dated 17 January 2013.

11. Judge McGavin at [13] did not accept that there could have been any formal agreement between the college and UKBA. There was no evidence of such an agreement. He did not accept that the respondent would make such an agreement, apparently without time limit, where the college was suspended and had no CAS documents to issue to students. At [14] and [15], Judge McGavin explained why, in his view, common law fairness did not arise. The appellant had known that the college was suspended. She had known that she did not have a CAS. She had proceeded to make the application anyway, knowing that it did not meet the requirements of the Immigration Rules.

12. There is no dispute that Judge McGavin allowed the appeal correctly as regards the Section 47 removal order and no further issue on that matter arose.

Grounds of Appeal

13. The grounds of appeal argue at [8] that the First-tier Tribunal erred in ignoring the letter dated 17 January 2013 from the college. I found paragraphs [3] and [4] of the grounds hard to follow. There appeared to be an argument that the judge further erred in concluding that the agreement did not exist in the terms maintained by the appellant. The Tier 4 policy guidance referred to leave being curtailed or limited if a sponsor's licence was revoked. This had never happened to the appellant and this was an indication that she was entitled to continue her studies even though the college was suspended. Paragraphs [5] to [7] of the grounds raised arguments of common law fairness following **Thakur (PBS decision – 'common law fairness') Bangladesh [2011] UKUT 151 (IAC)** and **Patel (revocation of sponsor licence - fairness) India [2011] UKUT 211 (IAC)**.

Discussion

14. Firstly, I did not accept that the failure of the respondent to curtail the appellant's leave or limit her leave or even notify her of the suspension of her college were matters that showed that the respondent had not acted in line with the Tier 4 policy guidance or had acted unfairly.

15. The extracts from the Tier 4 policy guidance in the grounds of appeal are not at all accurate. They conflate guidance on suspension and guidance on revocation and surrender. This matter concerns only suspension.

16. The correct section of the policy guidance on suspension is at paragraph 10. It states that

> "If you are already in the UK and studying with the Tier 4 sponsor, we will not tell you if we suspend their licence. However, if the result of the suspension is that the Tier 4 sponsor loses their licence, we will tell you and your permission to stay may be limited."

and goes on:

> "If you are extending your stay: You can still apply to extend your permission to stay if it runs out when the Tier 4 sponsor's licence is suspended, as long as you already have a CAS, however, we will hold the application until the suspension is resolved."

17. The policy guidance does not state that the appellant would be informed about suspension. It does not state that she was not entitled to continue her studies or should have had her leave limited or curtailed. It indicates that in her circumstances she needed a CAS if she wanted to apply for further leave to remain. There is no dispute here that the appellant did not have a CAS. It was only if she had been able to provide a CAS that the respondent would "hold the application until the suspension is resolved".

18. I found that the respondent had not acted outwith the policy guidance, therefore.

19. Secondly, the facts of this case are not at all the same as **Thakur** and **Patel**. In those cases the appellant's were left in a position where they did not know of the revocation of the sponsor's licence when the respondent should have informed them and given them an opportunity to remedy their situation. In this appeal, the appellant knew that the college had been suspended and knew that she did not have a CAS. The letter from the college dated 17 January 2013 told her this even if she did not know it before. Her option then was to apply for a CAS at a different college not to apply to continue her studies at the suspended college without including a CAS with the application.

20. Thirdly, I did not accept that Judge McGavin erred in his assessment of the evidence about the purported agreement between the college and the respondent. He states at [3] that he took into account when making his decision the appellant's bundle of evidence which included the letter from the college. He was correct to state at [13] that there was no evidence of an "agreement". The letter from the college refers only to the respondent having advised the college to tell students to submit applications in the way this appellant did.

21. In addition, it appeared more than likely to me that his statement of there being no evidence of an agreement was a reference to there being no correspondence between the college and the respondent of any kind that might support the claim that there was an "agreement" or even that the respondent's advice as set out in the letter had been given in those terms.

22. Further, as pointed out by Mr Tufan, the reference to the respondent advising that students should make a "CAS application" does not make sense. The application was one for further leave to remain as a student under Tier 4 of the Points Based System, not a "CAS application". The very problem that had to be addressed was the inability of the college to issue a CAS and the absence of that document from the appellant's application. This made it even less likely, in my

view, that the respondent would have given the advice in the terms set out in the college's letter dated 17 January 2013.

23. For all of these reasons, I did not find that Judge McGavin erred in law when he refused the appeal.

Decision

24. The determination of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed: Dated: 06 November 2013
Upper Tribunal Judge Pitt