Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/11481/2013

THE IMMIGRATION ACTS

Heard at Field House
On 22 August 2013

Determination Promulgated
On 3 September 2013
…………………………………

Before

UPPER TRIBUNAL JUDGE LATTER
UPPER TRIBUNAL JUDGE COKER

Between

V K D
(anonymity order made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Ms Z Kiss, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by the appellant against a decision of the First-tier Tribunal issued on 26 June 2013 dismissing his appeal against the respondent's decision made on 27

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March 2013 refusing him further leave to remain as a Tier 4 Student and making a decision to remove him under s.47 of the Immigration, Asylum and Nationality Act 2006.

Background

2. The appellant is a citizen of Tanzania, born on 7 May 1989. He first arrived in the UK on 28 August 2007 with leave to enter as a student until 30 September 2011. He was subsequently granted further leave to remain in the same capacity until 5 January 2013. He then made a further application for leave to remain as a Tier 4 Student. However, his application was refused because he failed to meet the requirements of Appendix A (Attributes) as he provided no evidence to show that he had been assigned a CAS and no valid CAS was found. Further, he did not provide any evidence that he had reached the required standard of English. As he could not meet the requirements of Appendix A, he was unable to meet the requirements of Appendix C. For these reasons his application was dismissed.

3. The appellant appealed against this decision and asked for his appeal to be determined without a hearing. The judge found that the appellant had failed to submit a valid CAS letter or evidence permitting the respondent to access the Pearson website data for verification of his test scores in relation to the English language criteria. She rejected an argument that the respondent should have applied her policy on evidential flexibility, commenting that it was up to the appellant to ascertain the steps he had to take to meet the specified criteria in the rules. He had said that his college would submit a CAS letter but a later explanation showed that his college could never have issued one to him. The judge went on to consider article 8 but found that the appellant had not shown that his human rights were engaged or that he had any right to remain in the UK to take any further courses. There was no evidence that his proposed course was part of a qualification which he was close to completing. She dismissed the appeal on both immigration and human rights grounds.

The Grounds and Submissions

4. In his grounds of appeal the appellant argued that the judge failed to consider his private life as he had invested money to complete his studies in the UK and that the decision was not in accordance with the law.

5. Permission to appeal was granted on the basis that the judge had failed to deal with the removal decision under the 2006 Act and that although the grounds submitted in support by the appellant on the other issues were brief, they could be argued in addition to the issue about the lawfulness of the removal decision.

6. There has been no appearance by or on behalf of the appellant at this hearing. He wrote to the Tribunal on 21 August 2013 asking for an adjournment due to his health problems but adding that if the hearing was not adjourned, the appeal should be

decided on the papers. His application was refused as there were no details of the nature of his claimed ill-health and it was not supported by a medical certificate or other evidence. In any event, the appellant appeared to accept that the appeal could properly be dealt with in his absence.

7. We are satisfied that there is no reason why the appellant could not have attended this hearing if he had wished to do so and that the proper course is for us to proceed with the hearing.

8. Ms Kiss conceded that the judge had erred in law by failing to deal with the removal decision and in the light of the judgment of the Court of Appeal in the Secretary of State v Ahmadi [2013] EWCA Civ 512 that decision was not in accordance with the law. However, she submitted that the judge had not erred in law in respect of the variation decision. The judge had dealt with the appellant's private life and reached a decision properly open to her.

The Error of Law

9. We are satisfied that the judge erred in law by failing to deal with the removal decision. In the light of Secretary of State v Ahmadi that decision was not in accordance with the law and is unaffected by the change in the law amending the provisions of s.47 in the Crimes and Courts Act 2013, which only has prospective effect.

10. The appellant also sought to challenge the judge's decision dismissing his appeal against the decision to refuse him further leave to remain. We are not satisfied that there is any substance in these grounds. Further leave was properly refused under the Rules. The appellant did not supply a CAS and no CAS reference number was submitted with the application. In addition there was no evidence to establish that he met the required standard of English. The judge was right to find that this was not a case where the policy on evidential flexibility had any application and that the appellant knew that he could never meet the criteria of the application he had made.

11. The grounds assert that the judge failed to consider his private life as he had spent a considerable sum of money to complete his studies but these issues were dealt with in [21]–[24] of the judge's decision. She was entitled to comment that the appellant had entered as a student in the knowledge that his leave to remain was temporary and dependent on him being a student of a recognised institution taking a valid course. In the light of the judge's findings of fact, an appeal had no prospect of success on article 8 grounds.

12. In summary, although the judge erred in law by failing to find that the removal decision was not in accordance with the law, her findings on the variation decision were properly open to her for the reasons she gave.

Decision

13. The First-tier Tribunal erred in law in relation to the removal decision and we set aside her decision in that respect only. We re-make that decision by finding that it was not in accordance with the law and therefore remains to be re-made by the respondent. The decision dismissing the variation appeal stands.

14. No application has been made to vary or discharge the anonymity order made by the First-tier Tribunal and that order stands.

Signed Date: 3 September 2013

Upper Tribunal Judge Latter