



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/12948/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26<sup>th</sup> September 2014**

**Determination  
Promulgated  
On 6<sup>th</sup> October 2014**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**MR MUHAMMED ALI**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Saini (instructed by MTG Solicitors)

For the Respondent: Ms A Everett (Senior Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. This is an appeal to the Upper Tribunal, with permission, by the Appellant with regard to a determination of the First-tier Tribunal (Judge Mailer) promulgated on 23rd December 2013 by which he dismissed the Appellant's appeal against the Secretary of State's decision to refuse her leave to remain as an academic visitor in a decision taken on 3rd April 2013.

2. My first task is to decide whether the First-tier Tribunal made an error of law and if so whether and to what extent the determination should be set aside.
3. The Appellant came to the UK on 12th August 2008 with leave to enter as a student. That leave was variously renewed until March 2012. She made an application in time on 3rd March 2012 for leave to remain as an academic visitor.
4. The background is that the Appellant had been studying at Riyat College and in November of 2011 paid them to register her with IAM to resit exams in December 2011. The college failed to do so but then promised to register her for the March 2012 exams. After that the college stopped responding to her queries. Unknown to the Appellant, the college's license was suspended in October 2011. It closed its doors in December 2011 and its license finally revoked with immediate effect on 24th February 2012.
5. Ms Everett clarified that nothing is triggered by the licence being suspended but once it is revoked it has the effect of the policy stemming from the Patel (revocation of sponsor license - fairness) [2011] UKUT 211 (IAC) judgment coming into effect. If a student studying at a college has more than six months left on their leave, that leave is curtailed to 60 days for them to find an alternative college. If a student has an outstanding application to study at a college, that application is stayed for a period of 60 days to enable them to obtain another CAS.
6. The Appellant in this case did not have an outstanding application nor did she have more than six months left. Her application was made only the day before her leave was due to expire. She had been told by the examining body, IAM, that they would register her to sit her outstanding exam but she would need a CAS to show that she was a lawful student. She did not have enough time to find a CAS.
7. It was the Appellant's case that she did not know that the college was in any trouble until she saw a BBC news article in December of 2011.
8. It is clear that the Appellant could not succeed under the Rule under which she applied as she does not meet the requirements for an academic visitor as governed by paragraph 46j. She could not succeed under the provisions for a Tier 4 (General) Student Migrant either as she does not have a CAS. It was argued on her behalf that she should have benefited from the spirit of the Patel policy. Her circumstances were unique in that she had no time to do anything about obtaining a replacement CAS.
9. It was argued on the Appellant's behalf that the Secretary of State should have given anxious scrutiny to the covering letter which she submitted with her application and in which she set out her difficulty. She submitted her application without legal advice. The content of that letter should have put the caseworker on notice that she could not have had time to

secure a CAS and all she was asking for was for a period of leave to allow her to resit her exams and finish the course.

10. That is the basis that it is argued that the Appellant should succeed in her appeal. However, as I indicated I was dealing firstly with whether or not the First-tier Tribunal made an error of law in its determination. The First-tier Tribunal was clearly considering the above arguments when it was told by the Appellant's representative that the exam governing body, IAM, had ceased trading. That effectively "pulled the rug" from under the appeal and as a result the Judge, unsurprisingly, dismissed it.
11. It was in fact an error by the representative that IAM had ceased trading. IAM had transferred to another organisation and was and is still carrying out the exam in question. The Judge cannot be criticised but that nevertheless made his decision based on a mistake of fact. Through no fault of the Judge therefore his determination contains an error of law. Had the Judge not been labouring under that mistake of fact it may be that he would have considered allowing the appeal on an Article 8 basis following the fairness principles set out in Patel.
12. On that basis the determination must be set aside and the appeal redecided.
13. As the issue has not been fully argued and determined as a result of the mistake of fact it was agreed by both representatives that this is an appropriate case to be remitted to the First-tier Tribunal to be decided before it.
14. The appeal to the Upper Tribunal is allowed to the extent that the First-tier Tribunal's determination is set aside and the appeal remitted to the First-tier Tribunal for a full rehearing by any Judge other than Judge Mitchell.

Signed

Date 3<sup>rd</sup> October 2014

Upper Tribunal Judge Martin