IAC-AH-KRL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/33951/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 October 2014	**On 30 October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVID TAYLOR

Between

MR BILAL JAVED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Read of Counsel
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The Secretary of State is the appellant to this appeal but for the sake of consistency I refer to her as the respondent and to the original appellant as such.

2. The appellant is a 23 year old citizen of Pakistan. In a determination promulgated on 18 June 2014 in the First-tier Tribunal, Judge Brown allowed the appeal "on the basis that the decision appealed against was not made in accordance with the law".

3. The appellant had appealed against the respondent's decision to refuse his application for further leave to remain in the United Kingdom as a student. He had had leave to remain on that basis until 25 May 2013 and his application for further leave, the subject of the present appeal, was made within the period of that leave. The appellant's application was refused because the CAS had been withdrawn by the sponsoring college. The appellant's claim was that he was unaware that the CAS had been withdrawn at the time that he made his application and had received no notification from the college until 12 August 2013. The judge allowed the appeal on the basis that the respondent had not followed her own well-known policy of allowing 60 days for the appellant to have the opportunity to deal with the validity of the CAS and/or to find a new college within that time.

4. At the hearing before me, on the issue of error of law, Mr Wilding acknowledged that the respondent had not granted 60 days but claimed that the judge had given no reasons for his decision and it should therefore be set aside.

5. For the appellant, Mr Read submitted that there is no evidence from either party as to why the college withdrew the CAS. At the hearing before Judge Brown, the respondent chose not to be represented. The same college, on 12 October 2013, had written to the appellant inviting him to re-enrol and, again, no reasons were given why the CAS had been previously withdrawn. Mr Wilding acknowledged that the college letter had been in evidence before the First-tier Tribunal but it was not clear from the determination that that was the reason why the appeal had been allowed.

6. Having reviewed the First-tier Tribunal decision and the submissions by both representatives, I am satisfied that there was a material error of law in the determination of Judge Brown in that his reasons are manifestly unclear. The determination must therefore be set aside.

7. I cannot, however, find fault with his ultimate conclusion. Neither party was able to provide any cogent reason why the CAS had been withdrawn by the college. Having regard to the letter dated 12 August 2013 inviting him to re-enrol, the benefit of the doubt must be given to the appellant. In those circumstances it seems to me that the respondent should have followed her own well-known policy of allowing the appellant 60 days to re-enrol or find a new college. She failed to do so and, as such, her decision was not in accordance with the law.

Notice of Decision

8. The First-tier Tribunal decision contained an error of law such that the determination must be set aside. I remake the decision by allowing the appeal on the basis that the

respondent's decision of 7 August 2013 was not in accordance with the law. The appellant's application is therefore awaiting a lawful decision.

No anonymity direction is made.

Deputy Upper Tribunal Judge David Taylor
29 October 2014

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a whole fee award of £140 for the following reason, namely that on the evidence available to the respondent it should not have been necessary for the appellant to have appealed.

Deputy Upper Tribunal Judge David Taylor
29 October 2014