



IAC-FH-LW-V1

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

Appeal Number: IA/53350/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 19 June 2014**

**Determination
Promulgated
On 21 October 2014**

Before

**THE HONOURABLE MRS JUSTICE SIMLER
DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SAQIB EHSAN

Respondent

Representation:

For the Appellant: Mr P Duffy, Home Office Presenting Officer
For the Respondent: No appearance

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal Judge Jessica Pacey who allowed the appeal of the appellant, Mr Ehsan, under the Immigration Rules. We shall continue to refer to Mr

Ehsan as the appellant as he was before the First-tier Tribunal for convenience.

2. Before us the Secretary of State is represented by Mr Duffy. The appellant has chosen not to attend this hearing or to give evidence. Instead he has put forward a Rule 24 notice together with a witness statement signed with a statement of truth dated 3 March 2014. We will return to that in due course.
3. The appellant was granted leave to enter as a Tier 4 (General) Student valid until 6 August 2012 and came to this country to study at London Waltham College under that visa. On 3 August 2012 he applied to extend his Tier 4 visa by an application under the points-based system. That application was supported originally by a Confirmation of Acceptance for Studies (“CAS”) certificate in respect of Waltham College, his sponsor, with a CAS number E4G92KIC10F019 given.
4. By a letter dated 27 June 2013 from the Secretary of State to him, the Secretary of State informed him that the sponsor status for Waltham College had been revoked. He was given 60 days within which to identify and provide a new Confirmation of Acceptance for Studies certificate in respect of an alternative college. He responded to that invitation and provided confirmation that he had been accepted by St Andrew’s College London and he provided a CAS certificate number E4G7UU5D140ODX.
5. By a decision dated 27 November 2013 his application for leave to remain as a Tier 4 student under the points-based system was refused. The reason for that refusal was that the Secretary of State was not satisfied that he had a valid Confirmation of Acceptance for Studies certificate because that certificate or sponsorship had been withdrawn by the sponsor. The Secretary of State made clear that this was not a situation where the Secretary of State had revoked the sponsorship, but the application had been withdrawn by the sponsor and the CAS certificate number associated with St Andrew’s College London was given.
6. The appellant gave notice of appeal on 13 December 2013 against that decision and that appeal was dealt with on the papers by the First-tier Tribunal. The Tribunal Judge dealt with the burden and standard of proof at paragraph 3 and directed herself that she was only to consider evidence submitted in support of and at the time of making the application. She then went on at paragraphs 7 to 10 of the decision to set out the evidence that she had considered and said the following:-
 - “8. The CAS I have in the respondent’s bundle states at the top ‘CAS withdrawn’. The sponsor is stated to be London St Andrew’s College. The date the CAS was assigned was 21.8.13. The CAS in the appellant’s bundle, referring to London St Andrew’s College, also stated that the CAS was assigned on 21.8.13. On both it is recorded that he could not study at London Waltham College because the college ‘had been revoked’.

9. I note that in his witness statement the appellant said that his college's licence had been revoked whilst his application was pending.

10. I note that the respondent took over a year to determine the appellant's application, a full academic year and more in fact. Further, the respondent has not seen fit to state when London Waltham College had been removed or when the reference number had been revoked. There is nothing before me to indicate that in August 2012 when the appellant made his application there was no valid CAS number.

11. I therefore allow the appeal under the Immigration Rules."

7. The Secretary of State sought permission to appeal against that decision on the basis that the First-tier Tribunal had materially misdirected itself in law in concluding that there was nothing to indicate that in August 2012 when the appellant made his application there was no valid CAS number and permission to appeal was granted by First-tier Tribunal Judge Brunnen on 1 May 2014.

8. As we have indicated the appellant has not attended but has sought to make submissions seeking to support the First-tier Tribunal's decision. We deal first with the question whether or not there was an error of law in the decision.

9. Paragraph 245ZXC of the Immigration Rules and paragraph 116C of Appendix A make clear that a Confirmation of Acceptance for Studies will only be considered to be valid if the sponsor has not withdrawn the offer since the CAS was issued. The proper approach accordingly is to consider the position as at the date of the Secretary of State's decision, either granting or refusing the application, and not as at the date of the application as the Judge directed herself at paragraph 3.

10. Moreover, we are quite satisfied that the First-tier Tribunal Judge materially misdirected herself as to the evidence by referring to the wrong college and the wrong CAS in reaching her determination so that the determination was made on what was in fact a false basis. Her determination was made by reference to the validity of the CAS in respect of London Waltham College; but both the Secretary of State and the appellant agree that that college's sponsorship status had been revoked and the appellant had been provided with the opportunity in accordance with the Secretary of State's policy, to provide an alternative college and sponsorship certificate. We are therefore satisfied that the decision was wrong in law and should be set aside. We should accordingly make the decision afresh and we proceed to do that.

11. We have already summarised the essential facts.

12. The sponsorship status of St Andrew's College London has never been revoked and there is nothing in the material provided by the appellant to challenge that. What happened was that between the date when the appellant provided a new CAS certificate number in respect of St Andrew's College and the date of the Secretary of State's decision of 27 November 2013, the college withdrew its acceptance of the appellant. We do not have any independent evidence as to why the college withdrew its acceptance of the appellant. However, the appellant's witness statement confirms that he provided details of the new sponsor, St Andrew's College, and then goes on in the following terms at paragraphs 6 to 9:-
- "6. I confirm that after having sought admission and CAS from my Tier sponsor, initially I was advised by the college not to take the classes until I was granted with my requested leave to remain by the respondent/Home Office, and following the advice of the college staff I reconfirmed by the Home Office by making a phone call and Home Office to advise me the same as college did, but later I was directed to attend the college as per the given schedule.
 7. I confirm that the alleged deficiency/issue in my attendance if there was any was due to the advice of the college staff which was later resolved through college committee concerned, and I continue to take classes as per the given timetable by the college.
 8. I confirm that after the issue having been resolved on 16 October 2013 I was advised to get my formal registration with the awarding body of my undertaken courses as to appear in the coming exams.
 9. I confirm that since 16 October 2013 I was regularly and effectively following my course and following my timetable/schedule and I have never been told or notified with any of such decision by the college to withdraw my CAS."
13. The appellant has of course not attended to give that evidence or to be cross-examined. Had he done so, no doubt the nature of the advice he was given and who he was given it by and precisely what he was told would have been explored, but in any event, it is clear from his own witness statement that having originally been told not to attend classes he was directed to attend the college as per the given schedule, as he indicates at paragraph 6.
14. We do not know why the college subsequently withdrew his certificate. He has not provided evidence to us about that. We cannot go behind this. The fact of the matter is that as at the date of the Secretary of State's decision of 27 November 2013, his CAS certificate had been withdrawn and was not a valid certificate within the Immigration Rules. He could not therefore be accorded the 30 points in respect of that certificate or the 10

points in respect of maintenance funds associated with that course. We cannot see any other conclusion in light of the evidence that is available today and nothing that the appellant has provided by way of written submissions or evidence contradicts that position.

15. In those circumstances we are driven to the conclusion that the appellant's appeal against the decision of 27 November 2013 must be dismissed. The application was not made on the basis of a valid CAS certificate at the time it was determined. There was no unfairness by the Secretary of State. The withdrawal of the certificate was not a withdrawal by the Secretary of State. Nor can we see that there was any breach of any policy by the Secretary of State in that regard.
16. Accordingly, for the reasons just given we set aside the decision of the First-tier Tribunal as in error of law. We re-make the decision and dismiss the appellant's appeal.

Signed

Date

Mrs Justice Simler

16 October 2014