



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

Appeal Number: IA/00978/2015

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 30 July 2015**

**Decision Promulgated
On 14 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

**ISHTIAQ KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Whitefield Solicitors (did not attend)
For the Respondent: Mr G Harrison

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. Those representing the Appellant wrote to the court under cover of a letter dated 28 July 2015 requesting that the case be dealt with on the basis of the papers before the court. I am satisfied that the Appellant was aware of the date of hearing as it is referred to in the Solicitors letter and I am satisfied that it is in the interests of justice to proceed to a hearing in the absence in court of those representing the Appellant as they consent to such a course and it is permitted by Rule 38 of The Upper Tribunal Procedure Rules 2008.
3. The Appellant, a national of Pakistan was born on 3 April 1981. The Appellant appealed against the decision of the Secretary of State dated 16 December 2014 to refuse to grant an application for leave to remain as a Tier 4 Student and to remove him from the United Kingdom. First-tier Tribunal Judge Lloyd-Smith dismissed the appeal and the Appellant now appeals with permission to this Tribunal.
4. The background to this appeal is that the Appellant entered the United Kingdom on 15 May 2010 as a Tier 4 Student. That leave was renewed and due to expire on 25 April 2015. On 25 April 2015 he made the application the refusal of which is the subject of this appeal. The relevant paragraph of the Rules for the purposes of this appeal is 245(c) with reference to paragraph 116(e) of Appendix A and paragraph 245X(d).
5. The Respondent refused the application because the Appellant could not be awarded the 30 points claimed for a Confirmation of Acceptance for Studies (CAS) as the sponsor on the CAS he provided was no longer on the Tier 4 Sponsor Register . The Appellant had been informed of this on 26 September and given 60 days to find a new sponsor and CAS but failed to do so. The Appellant could not be awarded the 10 points claimed for maintenance as he did not produce a valid CAS.
6. The First-tier Tribunal Judge dealt with the case on the papers. The evidence was that the Appellant had sought to obtain a new sponsor during the 60 day period. He was only able to obtain a conditional offer from Coventry University College for a course due to start on 5 January 2015. The Appellant could only obtain a conditional offer as he could not provide the college with an English Language Certificate. The Appellant booked a Pearson English Language test for 13 November 2014 but on attending was not allowed to participate in the test as he failed to provide his original passport and /or alternative ID to the test provider

on the day of the sitting. The provider would not accept the certified copies of the Appellant's passport and BRP provided by the Respondent on 26 September 2014. His passport was with the Home Office and although he had requested its return on numerous occasions it had not been provided. Also at the time he was notified that he had 60 days to obtain a new CAS the September 2014 admission date had passed and only a few sponsors offered admission in January 2015.

7. The Judge set out the relevant law in her decision at paragraph 3. She referred to the evidence which consisted of the appeal bundle and the bundle for the hearing and she accurately summarised the Appellant's case in paragraph 7-8 reflecting that she had taken into account all of the evidence before her. The Judge did not accept the explanations he gave for the difficulty in finding a course or obtaining a CAS. She found that he had left the application to the last day of his leave. She suggested that his previous CAS had been obtained in April then he would have had a valid language certificate in respect of that and should have used that. She did not accept that he produced more than one request for the return of his passport on 22 December 2014. She was not satisfied that the Appellant produced adequate evidence that he had booked to take a language test and that it was the absence of his ID documents that prevented him from taking the test and therefore she did not accept the explanation she gave for him being unable to provide a language certificate to obtain a CAS.
8. The Appellant's representatives in the grounds of appeal argue that the Appellant did everything in his power to obtain a language certificate because his previous one had expired but in the absence of ID documents he was unable to do so.
9. Mr Harrison relied on the Rule 24 notice.
10. The Appellant had 60 days to obtain a new CAS in accordance with the Respondent's policy and he failed to evidence that his arrangement to take the language certificate were frustrated by the documentation that he had. There was only one letter requesting the return of the passport. In essence he had failed to make good use of the 60 days.

Error of Law

11. Having read the documents provided by the Appellant's representatives and heard the submissions of Mr Harrison I reached the conclusion that the Tribunal made no material errors of law.

12. I am satisfied that the Judge gave comprehensive reasons in paragraphs 6-9 why she did not accept the explanation given by the Appellant in his appeal bundle as to why he had been unable to obtain a language certificate in order to obtain a CAS within the 60 day period he had been given. It may well be that had he chosen to attend court he could have amplified on the explanations he gave but he chose a paper hearing and the Judge was entitled to make the findings she did on the evidence before her.

13. The Judge was also entitled to find that the Appellant did not produce any evidence that the reason he was unable to take the language test was the absence of ID documents: given that this was the central feature of his appeal the Judge was entitled to conclude that he had failed to meet the evidential burden he bore.

14. The grounds merely seek to reargue the case and I am satisfied no error of law is made out.

CONCLUSION

15. I therefore found that no errors of law have been established and that the Judge's determination should stand.

DECISION

16. The appeal is dismissed.

Signed

Date 8.8.2015

Deputy Upper Tribunal Judge Birrell