



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/03804/2013**

THE IMMIGRATION ACTS

Heard at: Field House

Determination

On: 22 December 2014

Promulgated

On: 7 January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

**MR MARTIN KALULE
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

**For the Appellant: Mr J Mabwai, Legal Representative, Jackson
Immigration Advisory Service**

**For the Respondent: Mr T Melvin, Senior Home Office Presenting
Officer**

DECISION AND REASONS

1. The appellant is a Ugandan national, born on 24 February 1985. He appealed to the First-tier Tribunal against the respondent's refusal dated 17 January 2013 to grant him leave to remain as a Tier 4 (General) Student Migrant under the immigration rules. His appeal was dismissed by the First-tier tribunal on 22 January 2014. He appeals with permission against that decision.
2. In the determination of the First-tier Tribunal Judge, it is recorded at paragraph 10 that it was submitted by the appellant that Hadlow College had the necessary status to provide the English language test certificate

in question, as the validating authority for the appellant's proposed course.

3. The respondent contended that Hadlow College was not a recognised body pursuant to paragraph 6 of the Immigration Rules. The respondent refused his application on the basis that the appellant did not satisfy paragraph 245ZX and Appendix A, paragraph 118(b)(i) to (iii) of the Rules.
4. The Judge recorded at paragraph 15 that “the appellant's counsel accepted that it was not possible to rebut the submissions made by the respondent.” He held that in those circumstances, the appeal against the decision “based upon the failure to secure 30 points for the CAS letter” must be dismissed [16].
5. On 13 June 2014, Upper Tribunal Judge Renton granted the appellant permission to appeal to the Upper Tribunal. He referred to the grounds of appeal in which it was contended that far from making the concession referred to by the Judge at paragraph 15, the contrary was true: it is contended that the respondent's representative at the hearing had made a concession on the basis of which the Judge had in fact allowed the appeal.
6. At the hearing on 2 October 2014, it was agreed by Mr C Okech and Mr S Whitwell (the respective representatives on that occasion) that there remained substantial disputes of fact between the parties arising from the First-tier Tribunal Judge's determination. Directions had already been issued by Deputy Upper Tribunal Judge Davey on 8 August 2014, which had not been complied with.
7. I directed at the hearing on 2 October that the appellant should file and serve evidence from counsel who represented him before the First-tier Tribunal Judge, namely Mr R Arkhurst. The directions requested Mr Arkhurst to provide a written statement relating to the “concessions” recorded by the First-tier Tribunal Judge at paragraphs 14-16 of the determination dated 21 January 2014. That statement, together with the grounds of reconsideration in support of the application for permission to appeal, was to be filed on the Tribunal and served on the respondent by 17 October 2014.
8. It was further directed that once the statement and grounds of reconsideration have been received, the matter should be referred to the Principal Resident Judge for further instructions.
9. It was thus anticipated at the hearing on 2 October 2014 that counsel's statement as well as the application for reconsideration would be served upon the First-tier Tribunal Judge for his response to the allegations made in the grounds for reconsideration.

10. At the resumed hearing on 22 December 2014, Mr Mabwai informed the Tribunal that Mr Okech, who had represented the appellant on 2 October 2014, 'had gone to Uganda a few days before the 22 December 2014'.
11. Mr Okech produced on 26 October 2014 further documentation, consisting of seven pages. In the covering letter, Mr Okech stated that it had not been possible to submit the document prior to that date.
12. The document relied on was a fax sent to Mr Okech from the clerk to Mr Reginald Arkhurst, of counsel, 4 King's Bench Walk, dated 23 October 2014. The message from the clerk was "please find notes from Reginald Arkhurst."
13. The document in fact annexed was the "grounds for reconsideration" - a document that was already before the Tribunal - and which constituted the basis upon which Judge Renton granted the appellant permission to appeal.
14. Mr Mabwai accepted that there had been no compliance with the directions, to which I have referred, dated 2 October 2014. Mr Arkhurst had been requested to provide a written statement setting out the disputed contentions which were then to be placed before the First-tier Tribunal Judge for his written response, if any. However, Mr Mabwai could not provide any explanation as to why there had been no proper compliance with that direction.
15. Mr Okech had been in attendance when the direction was made on 2 October 2014. The directions were in fact attached to the notice of resumed hearing; they were sent to both the appellant and his representatives at the addresses on record.
16. Mr Mabwai stated that he had been informed by Mr Okech that "everything had been complied with." However, as already indicated, there has been no proper compliance with the directions. All that has been done is to re-serve the grounds of consideration without any notes, explanation or statement from Mr Arkhurst.
17. Mr Melvin submitted that the appellant had been given an adequate opportunity to present the documentation and statements required. This had not been done. There has been no explanation given as to the failure to comply with the directions. Nor was there any application to adjourn the hearing to begin the process again.
18. Mr Mabwai did not make any submissions.

Assessment

19. I am satisfied that the directions dated 2 October 2014 were received by the appellant's representatives. That is confirmed in Mr Okech's covering letter to the Tribunal dated 26 October 2014.
20. However, the fax sent to Mr Okech by Mr Arkhurst's clerk dated 23 October 2014 simply resubmitted the grounds for reconsideration. Although the message on the cover sheet states "please find notes from Reginald Arkhurst", no such notes have been produced. Nor has any statement been prepared and presented by Mr Arkhurst.
21. I am satisfied that the appellant has been granted a full opportunity to substantiate the contention that the respondent's representative made the alleged concession, on the basis of which the Judge had supposedly allowed the appeal. There has been a failure to comply with the directions. No further adjournment has been sought.
22. In the circumstances, I find that it has not been shown that the First-tier Tribunal Judge erred in law in dismissing the appeal.

Notice of Decision

The appeal is dismissed under the immigration rules

No anonymity direction is made.

Signed

Date 6/1/2015

Deputy Upper Tribunal Judge Mailer