Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/33642/2014

THE IMMIGRATION ACTS

Heard at Birmingham Employment Centre	**Decision Promulgated**
On 28 April 2015	**On 1 May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

NOMAN IQBAL SIDDIQUI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mrs S Ahmad, Ahmad & Williams Solicitors
For the Respondent: Mr N Smart, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 28 August 1982 and is a citizen of Pakistan. He arrived in the UK on 19 November 2011 and held entry clearance that acted as leave to enter as a tier 4 (general) student migrant.

2. On 24 May 2013 he applied to extend that leave. His application was refused by the Secretary of State on 6 August 2014 on the ground that his CAS had been withdrawn by his sponsoring college. The appellant appealed to the First-tier Tribunal, as he was entitled to do. However, his

appeal was dismissed on 22 January 2015 by First-tier Tribunal Judge Kershaw on the basis that the appellant had no valid CAS at the date of decision. I mention that Judge Kershaw determined the appeal without a hearing. The appellant sought to challenge that appeal outcome and permission to do so was granted on 16 March 2015.

3. Whilst preparing for the hearing, I realised that there was a significant discrepancy between the version of events provided by the Secretary of State and that given by the appellant. The Secretary of State said that the appellant's CAS was withdrawn by his sponsoring college. The appellant said that the Secretary of State withdrew the college's sponsorship licence. The appellant argued that as a result of the college's licence being revoked, he was entitled to benefit from the published policy that he would be given 60 days to find an alternate provider. The appellant produced evidence that he had found such a provider but that a CAS could not be issued by that new sponsor without confirmation that his leave had been extended for 60 days.

4. Having examined the appeal file, I realised there was no evidence to identify which of the two positions was accurate. I undertook my own research and identified the news section of the Metro College of Management Science's website. It provided the following chronology. On 24 December 2013, the college was temporarily suspended from the tier 4 register. The college confirmed it was working with the Home Office to address the concerns and advised all students to continue attending courses as normal. On 28 January 2014, the college confirmed it has met with Home Office compliance and suspension staff and they were working to resolve the compliance issues regarding two courses. The college expected all students to continue attending courses. On 8 February 2014, the college confirmed it was continuing its negotiations with the Home Office and again informed students that they should continue attending courses. On this occasion the college advised students that should they fail to attend then their sponsorship would be withdrawn. On 14 February 2014, the college announced that its sponsorship licence had been revoked and that it was seeking to challenge that decision through the Courts. On 20 February 2014, the college posted news that its licence had been reinstated. The college advised students that those who missed their classes would be reported to the Home Office.

5. At the start of the hearing I disclosed the above information to Mrs Ahmad and Mr Smart. Both agreed that the information was relevant to the appeal to the Upper Tribunal and both acknowledged that the information had not been provided by either side. They were content with the information I disclosed and neither sought an adjournment.

6. The chronology of events led to a discussion as to the appellant's position. Mr Smart acknowledged that there was no information as to when the College withdrew the CAS. Mrs Ahmad confirmed with the appellant (who was present at the hearing) that he had stopped attending classes when the college was first suspended. He stopped because he lost confidence in

the college. During our discussion, I indicated that I was of the view that the appellant could not benefit from the 60 day policy until the college's licence was actually revoked. I also noted that it was reasonable to assume that the college was assiduous in complying with its sponsorship duties once its licence had been suspended. This is evident from its commitment to resolve the compliance issues with the Home Office. This is not a case where the college closed down following the suspension. It is also clear from the fact the college advised its students, including the appellant, to continue attending courses.

7. Before hearing submissions, I gave Mr Smart and Mrs Ahmad time to gather their thoughts. When we resumed, both indicated their readiness to make submissions. Mrs Ahmad relied on the appellant's own evidence, that he lost confidence in his sponsoring college when its licence was suspended, that he ceased to attend at that time and that he subsequently found another college that would sponsor him (Kimberley College) but which was unable to issue a CAS because the appellant's immigration status was unclear at that time. Mrs Ahmad also reminded me that on 4 March 2014 the appellant had sought confirmation from the Home Office that he had 60 days to apply for a new course provider following the revocation of his sponsor's licence but that no confirmation had been given.

8. Given the earlier discussion that I have recorded above I did not need to hear from Mr Smart. Despite the compassionate circumstances, it is clear from the chronology of events that the Metro College of Management Science withdrew its sponsorship of the appellant when he stopped attending his course. They had warned students that they would do so and it was in the college's own interest to be assiduous in complying with its sponsorship duties given the circumstances. The appellant has admitted that he stopped attending his course when the college's licence was first suspended. Given these facts, it is more likely than not that the CAS was withdrawn as stated by the Secretary of State and that it was that decision that resulted in the variation application being refused. This was not a situation where the appellant had been left without a sponsor as a result of revocation of a college's licence.

9. Mrs Ahmad also submitted that common law fairness meant that the appellant should have benefited from the policy in any event because he responded to the suspension of the licence. The appellant's actions had been reasonable. Given the Court of Appeal's guidance in EK (Ivory Coast) v SSHD [2014] EWCA Civ 1517 and Sukhjeet Kaur v SSHD [2015] EWCA Civ 13, it is clear that the appellant could not benefit from any application of common law fairness. In simple terms, there was no duty on the Secretary of State to investigate the reasons why the CAS had been withdrawn.

10. In this roundabout way, I come at last to the question of whether Judge Kershaw's decision and reasons statement is infected by an error of law. The reasons for his decision are contained in paragraphs 16 to 21. Judge Kershaw focused on the fact that the appellant's CAS had been withdrawn

and that there was no evidence to the contrary. He identified the grounds of appeal, which included the compassionate factors discussed above. But it was the absence of a valid CAS that informed his decision. As can be seen from the above, there is nothing wrong in law with that decision. It is clear that Judge Kershaw was not provided with all relevant evidence but nevertheless he came to the only lawful decision possible.

11. As a result, I find there is no error of law in Judge Kershaw's decision and it is upheld.

Decision

The decision and reasons statement of First-tier Tribunal Judge Kershaw does not contain an error of law and is upheld.

Signed Date **1 May 2015**

John McCarthy
Deputy Judge of the Upper Tribunal