



The Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal number: IA/38997/2014

THE IMMIGRATION ACTS

Heard at Manchester  
On July 17 2015

Decision and Reasons Promulgated  
On July 20 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR BAKHT GILLANI  
(NO ANONYMITY DIRECTION)

Respondent

Representation:

Appellant

Mr Harrison (Home Office Presenting Officer)

Respondent

Unrepresented

DETERMINATION AND REASONS

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellant is a citizen of Pakistan and is now twenty-two years of age. He applied on August 14, 2014 for leave to remain as a Tier 4 (General) Student Migrant having originally entered the United Kingdom on March 18, 2012 with leave valid until August 15, 2014. The respondent refused this application on September 12, 2014 and took a decision to remove him by way of directions

under section 47 of the Immigration, Asylum and Nationality Act 2006 because he failed to provide a valid Confirmation of Acceptance for Studies (CAS).

3. The appellant appealed that decision on October 1, 2014 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
4. The matter came before Designated Judge of the First-tier Tribunal Garratt on February 23, 2015 and in a decision promulgated on April 2, 2015 he allowed the appellant's appeal to the extent that he remitted the decision back to the respondent for reconsideration in line with sixty-day policy guidance.
5. The respondent applied for permission to appeal on April 10, 2015 submitting the Tribunal had erred because at the time of application the appellant did not have a valid CAS and consequently the policy guidance did not cover his appeal.
6. Designated Judge of the First-tier Tribunal Zucker gave permission to appeal on June 8, 2015 finding it arguable the Tribunal had misconstrued the guidance.
7. The First-tier Tribunal did not make an anonymity direction pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 and I see no reason to make an order now.

#### **ERROR OF LAW SUBMISSIONS**

8. Mr Harrison relied on the grounds of appeal and submitted the Tribunal had misunderstood the guidance. At the time the application had been made the appellant had completed his studies and that included taking his end of year exams. He had failed those exams and was fully aware in July 2014 that his sponsor's licence had been suspended. He therefore knew he could not meet the Rules when he submitted his application. The respondent's policy covered situations where the appellant was blameless but this was a case where the appellant submitted his application in full knowledge that the sponsor's licence had been suspended. Whilst he may have had compassionate reasons for failing these were rejected by the examining board and did not have any bearing on his application. It was submitted the Tribunal had wrongly interpreted the guidance and the decision should be set aside and the appeal remade and dismissed.
9. The appellant adopted a statement that he handed to me on the above date and asked that the original decision be allowed to stand. He stated that before submitting his current application he had contacted the respondent and had been told to submitted his application with the original CAS certificate even though it was no longer valid. He had spent a lot of money on both his studies and the legal proceedings wanted to complete his degree. He had retaken the exams that he had failed in June 2014 and was awaiting the results that were due sometime in July/August 2015. He invited the Tribunal to uphold the original decision and to grant him sixty-days to obtain a new sponsor.

## FINDINGS ON ERROR IN LAW

10. The appellant had come to the United Kingdom to study and in July 2014 he failed four exams. His leave was due to expire on August 15, 2014 and on August 14 he submitted an application for further leave based on the CAS that he had been issued with. The respondent considered that application and concluded that he did not have a valid certificate and was therefore not entitled to the appropriate points needed. In allowing the appeal the Tribunal relied on the respondent's own guidance that allowed an applicant a period of time to find a new sponsor where their previous Sponsor's licence had been suspended, revoked, surrendered or had expired.
11. The Tribunal had been provided with a copy of the November 2014 Tier 4 guidance and the Tribunal had regard to pages 122 to 126 of that guidance.
12. There was no dispute that when the appellant submitted his application he was fully aware that his Sponsor's licence had been suspended. A bundle of documents had been submitted to the Tribunal but it is clear from the email correspondence that the appellant had taken no steps to find an alternative college despite knowing his current Sponsor would be unable to sponsor him further. The emails demonstrating steps taken all post dated the date of his application.
13. In JA (revocation of registration - Secretary of State's policy) India [2011] UKUT 52 (IAC) the Tribunal held that in cases where an educational provider has its licence withdrawn during the period between a student's application for extension of leave as a Tier 4 (General) Student Migrant and the Secretary of State's decision on the application, it is the Secretary of State's practice (as set out in applicable guidance) to limit a student's existing leave to 60 days, if the student has extant leave of six months or more and if the student was not involved in the reasons why the education provider had its licence withdrawn. The guidance states that the leave of a student who has less than six months will not be limited. This guidance does not give rise to any legitimate expectation that the Secretary of State will grant a period of 60 days' leave to any student whose original leave had expired by the date of the decision, so as to afford him an opportunity to register with an alternative education provider. It is not irrational or unreasonable for the Secretary of State to distinguish between students who lodge their applications for extension of their leave many months in advance of the expiry of their leave and those who do not.
14. In Patel (Tier 4 - no '60-day extension') India [2011] UKUT 187 (IAC) the Tribunal held that (i) Where a sponsor's Tier 4 licence is withdrawn, the UKBA Policy Guidance operated to restrict the remaining leave granted to sixty days where a student has more than six months' of the original leave remaining. It has no effect on periods of less than six months; (ii) The policy does not operate to extend leave and in particular, it does not provide a sixty-day extension of leave to remain in a case where that leave to remain has already expired; (iii) The sixty-day restriction, if applicable, runs from the time when the Secretary

of State notifies the student of the imposition of the restriction following the withdrawal of the licence.

15. In Alam v SSHD [2012] EWCA Civ 960 the Court of Appeal that Patel (revocation of sponsor licence – fairness) India [2011] UKUT 00211 (IAC) demonstrates that even in the context of such a statutory scheme the public law requirement of fairness (see paragraphs 13-15 of the Upper Tribunal's determination) must still be observed, and fairness may impose additional obligations on the Secretary of State as decision maker under the PBS. However, the obligation to give those applicants whose colleges had lost sponsorship status an opportunity to vary their application by giving them time to find a substitute college was imposed on the Secretary of State as a matter of fairness in circumstances where there had been a change of position of which the Secretary of State was aware, but the applicants were themselves not at fault in any way: they were "both innocent of any practice that led to the loss of the sponsorship status and ignorant of the fact of such loss of status".
16. Case law clearly demonstrates that where an appellant is blameless and a Sponsor's position changes between the date of application and date of decision then the appellant should be given a period of time to rectify his position and policy states that should be sixty days.
17. This was not the position facing the Tribunal when it heard the appellant's appeal in February of this year. The appellant did not have a valid license when he submitted his application and his application was bound to be refused by the respondent in those circumstances. The sixty-day policy could not save the appellant.
18. The Tribunal allowed his appeal by remitting the decision back to the respondent but this was an error because the appellant should have obtained that certificate before submitting his application due to the fact he was aware his Sponsor's licence had already been suspended. Regardless of any conversation he may have had with the respondent the appellant was not blameless in this case. In order to benefit from the policy the appellant has to be blameless.
19. The policy guidance was not intended to allow every student sixty days to rectify their position. The guidance was there to assist applicants whose Sponsors had either had their licences revoked or suspended after they had submitted their applications but prior to the date of decision.
20. In the circumstances, I find the Tribunal erred in remitting this matter back to the respondent and I set aside that decision and remake it by dismissing the appeal under the Immigration Rules.
21. The appellant has since retaken his failed exams and is currently awaiting the outcome of those results. His option is of course to submit a fresh application but regrettably that application may have to be submitted out of country.

**DECISION**

22. There was a material error. I set aside the decision and I remake the decision and dismiss the appeal.

Signed:

A handwritten signature in black ink that reads "SPALIS". The signature is written in a cursive style with a long horizontal stroke at the end.

Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT  
FEE AWARD**

I make no fee award because I have dismissed the appeal.

Signed:

A handwritten signature in black ink that reads "SPALIS". The signature is written in a cursive style with a long horizontal stroke at the end.

Deputy Upper Tribunal Judge Alis