**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: IA095222015

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 12 May 2016** | **On 26 May 2016** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHANA**

**Between**

**JAWAD AKHTAR**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms J Victor-Mazeli, Counsel
For the Respondent: Mr C Avery, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant in this appeal is the Secretary of State for the Home Department. The respondent is a citizen of Pakistan born on 11 August 1986. However, for the sake of convenience, I shall continue to refer to the Secretary of State as the respondent and to Mr Akhtar as the appellant which are the designations they had before the First-tier Tribunal.

2. The appellant appealed against the decision of the respondent dated 18 February 2015 to refuse to vary his leave to remain in the United Kingdom and to remove him by way of direction under Section 47 of the Immigration, Asylum and Nationality Act 2006. First-tier Tribunal Judge M Phelan allowed the appellant's appeal to the extent that the appellant's application remains outstanding before the respondent to be considered in accordance with the law.

3. The respondent appealed against the decision and First-tier Tribunal Judge Page on 7 April 2016 granted permission for the respondent to appeal stating that it is arguable that there is an error of law in the decision to allow the appeal "to the extent that the appellant's application remains before the respondent to be considered in accordance with the law".

4. The substance of the complaint made by the respondent is that the judge erred in allowing the appeal on the basis that the respondent did not meet the requirements of fairness on his finding following the case of **Naved (Student – Fairness – Notice of Points) Pakistan [2012]** where it was stated that the respondent had a duty to contact the appellant to give him the opportunity to explain why his CAS was withdrawn before refusing his application. The respondent complains that the judge was unaware of a string of more recent Court of Appeal cases and referred me to the case of **Kaur v Secretary of State for the Home Department [2015] EWCA Civ 13** which found that **Naved** was very much fact specific and did not establish any universal principle applicable across the field of immigration decision-making.

5. The First-tier Tribunal in allowing the appellant's appeal made the following findings and stated that:

> "The appellant's case is that there was a valid CAS when the respondent made his decision on 18 February 2015 and therefore he was entitled to further leave."

6. The judge noted at paragraph 17 that the circumstances are exceptional because the appellant's CAS was withdrawn in error and the appellant was not at fault and that the college issued a new CAS immediately the appellant contacted them because the appellant was genuinely unaware that the error could result in his application being refused and his ability to serve evidence to prove his case at appeal is strictly limited by statute. The judge found that in all the circumstances of this case here fairness required the respondent to inform the appellant of the gist of the case which he has to answer, i.e. that there was a problem with his CAS, and afford him the opportunity to explain the substituted number and/or find a new college if his sponsor had lost their licence. The Respondent did not meet the requirements of fairness in this case and the decision is not in accordance with the law and found that the appellant's application for further leave to remain remains outstanding before the respondent.

7. The grounds of appeal state that the judge allowed the appeal on the basis that the respondent did not meet the requirements of fairness and her decision is not in accordance with the law and this finding is based on the judge's view following the case of **Naved** that the Secretary of State has a duty to contact the appellant to give him the opportunity to explain why his CAS was withdrawn before refusing his application. The grounds of appeal further state that the more recent Court of Appeal case of **Kaur** has established very clearly that there is no obligation on the part of the Secretary of State to contact an appellant to enable him to explain why a CAS is deficient or has been withdrawn save in particular circumstances which do not apply in this appeal. Therefore, the respondent argues that there is no breach of duty of fairness in this case and the judge has materially misdirected herself and that the determination should be set aside.

8. At the hearing I heard submissions from both parties as to whether there is an error of law in the determination. Mr Avery adopted his grounds of appeal and said that notwithstanding the decision that the appellant does not have a right of appeal, the appellant does have a right of appeal in this case but nothing turns on this. He further argued that no one told the Secretary of State that the CAS had been withdrawn and re-issued a day later and if that had happened the result might have been different. He emphasised that the CAS had been withdrawn and the subsequent revocation of the sponsor would have had no effect. He referred to the case of **Kaur**.

9. Ms Mazeli in her submissions said that although the judge relied on the case of **Naved** he also looked at other cases on the fairness point including **Patel** and **R v SSHD ex parte Doody [1993] UKHL 8** and came to a proper conclusion. She argued that the respondent when she made the decision on 18 February 2015 knew that the licence had been revoked and should have contacted the appellant and given him 60 days to find a new college and therefore unfairness has resulted by their failure to do so.

## My findings as to whether there is an error of law in the determination

10. The appellant's CAS was withdrawn in error on 1 July 2014 and a new CAS was issued on 2 July 2014. This information was not provided to the Secretary of State by the appellant or the college so therefore when the respondent made their decision to refuse the appellant's application on 18 February 2015 the information available to the respondent was that the appellant's CAS had been withdrawn.

11. The argument put forward by the appellant at the hearing was that because at the date of the hearing, the sponsor's licence had been revoked, the appellant should have been given 60 days to find a new college has no merit whatsoever. It was the case that the appellant's CAS had been withdrawn and it was not the case that the institution's licence

was revoked. The information before the respondent when she made her decision was that the appellants CAS had been withdrawn and only subsequent to that was the institutions licence revoked. The subsequent revocation of the sponsor's licence would have had no effect on the appellant because the appellant no longer had a CAS to the institution whose licence was then revoked.

12. I place reliance on the case of **Kaur** referred to me by the respondent where it has been made quite clear at paragraph 41 that the points-based system is basically an exact science. It is designed to achieve predictability, administrative simplicity and certainty. It does so at the expense of discretion that is to say it is prescriptive. The consequences of that failure to comply with all its detailed requirements will usually lead to a failure to earn the points in question and thus refusal.

13. I was referred to the case of **EK (Ivory Coast)** the facts of which were on all fours with the current appeal where the applicant in that case relied upon a CAS which she supplied with her application. It stated that between the date of her application and the date upon which the UKBA made its decision the sponsor withdrew this CAS and it appears this was done by mistake. The judge found in that case that the applicant was unaware of that. Her application was refused and judge Sales with whom Briggs LJ agreed in a separate judgment distinguished **Naved** and concluded that in the context of the points-based system there was no obligation to inform the applicant to enable her to make good any deficiencies in the application. The case law is quite clear that there is no discretion involved.

14. It was also argued that the judge took into account other aspects of unfairness and not only that in pursuance to **Naved** but I can see no unfairness on the part of the respondent in not alerting the appellant because there was no duty requiring her to do so. The points-based system as I have said is technical and prescriptive. One either meets the requirements or one does not. The appellant in this case clearly did not meet the requirements of the Immigration Rules and whether his circumstances were exceptional or not had no influence on the decision.

15. Had the appellant alerted the respondent about the new CAS having been issued to him, he would not have found himself in this unhappy position. The appeal of the First-tier Tribunal is set aside in its entirety as being erroneous in law and I remake the decision and dismiss the appellant's appeal.

## Notice of Decision

The appeal of the Secretary of State is allowed under the Immigration Rules
The appellant's appeal is dismissed

No anonymity direction is made.

Signed Mrs S Chana Date 25th day of May 2016

Deputy Upper Tribunal Judge Chana

**TO THE RESPONDENT**
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed Mrs S Chana Date 25th day of May 2016

Deputy Upper Tribunal Judge Chana