**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: IA/34294/2015**

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 20 April 2017** | **On 3 May 2017** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**MD RAFIQUL ISLAM**
(ANONYMITY DIRECTION NOT MADE)

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Unrepresented and not in attendance
For the Respondent: Mr I. Jarvis, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Bangladesh born on 15 September 1988. He is appealing against a decision of First-tier Tribunal Judge Roopnarine-Davies, made on the papers on 12 September 2016 and promulgated on 23 September 2016, whereby his appeal against the decision of the respondent to refuse to vary his leave to remain as a Tier 4 (General) Student was dismissed.

2. The appellant did not attend the hearing before me. The usher telephoned him to enquire as to his non attendance. She reported to me that she

spoke to him and he expressed the wish that the hearing proceed in his absence.

3. The background to this matter is that the appellant was granted leave as a Tier 4 student from 23 October 2009 until 28 October 2012. On 25 October 2012 he applied for further leave as a student but his application was refused because his college's licence had been revoked and therefore his Confirmation of Studies ("CAS") was not valid. The appellant appealed and his appeal was allowed to the extent that the matter was remitted to the respondent to allow him 60 days to find a new sponsor. It then fell to the respondent to send the appellant a letter confirming he had 60 days to find a new sponsor ("the 60 day letter").

4. The 60 day letter is not on the court's file. The respondent's position is that the 60 day letter was sent to the appellant's solicitors by recorded delivery on 28 August 2015.

5. The appellant, in a statement dated 11 September 2016 (and faxed to the First-tier Tribunal on that date), states that he did not receive the 60 day letter. He states that he sent a letter to the respondent on 25 October 2015 by recorded delivery to remind them to send the 60 day letter. A copy of the letter along with tracking information has been provided by the appellant.

6. However, the appellant's Form IAFT-1, which was lodged on 19 November 2015, unambiguously states that the 60 day letter was received by the appellant's representatives and thereafter acted upon by the appellant.

7. On 5 November 2015 the respondent refused the appellant's application on the basis that the appellant had not obtained a new CAS even though the 60 day period expired on 27 October 2015.

8. The appellant appealed to the First-tier Tribunal. The basis of the appellant's appeal, as set out in his Form IAFT-1, was that after receiving the 60 day letter he approached various colleges but was declined a place. He claims to have been told that he could not be given a place as colleges had been directed to not offer places to students from colleges which had had their license revoked. He also claimed that some colleges had been specifically instructed by the respondent to not offer him a place on any course. The appellant also claimed that removing him from the UK would breach Article 8 ECHR.

9. The appeal came before First-tier Tribunal Judge Roopnarine-Davies, to decide on the papers. The judge found that there was no evidence to support the appellant's assertion about colleges being directed to not offer him, or people in his position, a place. The judge was satisfied that the appellant had been given, and notified of, the 60 day period in accordance the respondent's policy. The judge also considered the appellant's Article 8 claim and rejected it on the basis that there was no evidence to substantiate a family or private life in the UK.

10. The appellant appealed to the Upper Tribunal. His grounds make three arguments: firstly, that the judge failed to have regard to his witness statement dated 11 September 2016; secondly, that the judge proceeded on the basis that the 60 day letter was received by him when it was not; and thirdly, that he never made an Article 8 claim and therefore the judge should not have made a finding on his private and family life.

11. Judge Roopnarine-Davies has not made any reference to the witness statement dated 11 September 2016 or addressed the assertion therein that the appellant never received the 60 day letter. It is more likely than not that the reason for this omission is that the witness statement, which was faxed to the court the day before the case was considered, was not in the file when the judge evaluated the evidence.

12. If a decision is made without all the material evidence being available to the judge, this can give rise to procedural unfairness, rendering a decision unsafe. As this is what occurred here – the judge made the decision without having considered the appellant's statement of 11 September 2016 - it would be unfair to allow the decision to stand. Accordingly, I set aside the decision.

13. Where there is an issue of unfairness, it is generally appropriate for an appeal to be remitted to the First-tier Tribunal. However, as all of the evidence is before me and this appeal was decided on the papers, I am satisfied that it would not be unfair for me to proceed with the remaking myself.

14. In remaking the decision I have considered, and taken into account, the documents that were before the First-Tier Tribunal, the appellant's statement of 11 September 2016, and his further statement dated 2 April 2017.

15. The appellant has provided contradictory information about whether he received the 60 day letter. In his appeal to the First-tier Tribunal, submitted on 19 November 2015, he clearly asserted that he had received the 60 day letter. The basis of his appeal was the difficulties he faced obtaining a new CAS after having been furnished with the 60 day letter. Although he complained it had been received late, there is no allegation that it was not received. This flatly contradicts the assertion made in the statements of 11 September 2016 and 2 April 2017 that the 60 day letter was never received.

16. Having considered and attempted to reconcile the different assertions of the appellant, I have reached the view that it is more likely than not that the appellant received the 60 day letter as he stated in his appeal on 19 November 2015. I find as a fact that the appellant received the 60 day letter.

17. As the appellant received the 60 day letter, I am satisfied that the respondent provided the appellant with an appropriate opportunity to obtain a new CAS, in accordance with her policy to give a 60 day period.

18. The appellant claims that the respondent instructed colleges to not offer him, or people in his position, a CAS. However, this assertion is not supported by any evidence whatsoever. The burden of proof is on the appellant and he cannot succeed by merely making an unsubstantiated allegation.

19. In respect of the appellant's Article 8 claim, it is apparent from the grounds that the appellant no longer wishes to pursue the claim. However, for the avoidance of doubt, if Article 8 had been pursued, I would have dismissed the claim for the reasons given by Judge Roopnarine-Davies.

20. In the grounds of appeal the claimant states that he has a "serious problem" in Bangladesh and his life would be in danger if he returned. No explanation is given as to what the problem is or why he believes he would be in danger. Nor is it clear if the appellant is seeking to make human rights or protection claim. Given the paucity of information, there is no basis for me to make any findings, or draw any conclusions, about the appellant's situation in Bangladesh.

Decision

A. The decision of the First-tier Tribunal contains a material error of law and is set aside.

B. I remake the decision by dismissing the appellant's appeal.

Signed

Deputy Upper Tribunal Judge Sheridan

Dated: 28 April 2017