



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/08054/2013

THE IMMIGRATION ACTS

Heard at Field House
On 22 October 2013

Determination Promulgated
On 7 November 2013
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Before

UPPER TRIBUNAL JUDGE ESHUN

Between

DIVYANGKUMAR BANSILAL PATEL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Hashimi
For the Respondent: Ms A Holmes, HOPO

DETERMINATION AND REASONS

1. The appellant is a citizen of India born on 2 September 1985. He has been granted permission to appeal the decision of First-tier Tribunal Judge Burnett dismissing his appeal against the decision of the respondent made on 27 February 2013 refusing his application for leave to remain in the UK as a Tier 4 (General) Student Migrant.

2. The appellant made an application on 1 April 2011 with a CAS assigned by London Business Academy. However, when the register was checked this organisation was not listed. The appellant was therefore sent a letter by UKBA dated 27 July 2012 allowing him 60 days to obtain a new CAS and submit an application to vary.
3. On 21 September 2012 the appellant submitted an application to study CIMA at Westbridge College but provided a conditional offer letter not a CAS. On 19 December 2012 a letter was sent by UKBA requesting up-to-date English test results and bank statements. On 17 January 2013 the UKBA received up-to-date bank statements but no TOEIC results were received.
4. The appellant appealed the respondent's decision and asserted that he in fact received the letter from UKBA on 3 September 2012. He said he provided a Royal Mail recorded receipt to demonstrate this. He further stated that he did not get 60 days to submit a new CAS. He explained that he had difficulties taking and completing an English language test. He had booked an exam for 15 and 19 March 2013.
5. He provided his TOEIC test results, a letter from Premier Language Training Centre dated 2 April 2013, a track and trace printout from Royal Mail, a copy of an envelope with his name on it and documents from Canara Bank. He provided a further letter to his grounds of appeal stating that he has been unable to obtain a CAS because he had no valid leave and a pending appeal. He provided bank statements covering the last 28 days proving he has the maintenance required.
6. The appellant's appeal was determined on the papers as requested by the appellant.
7. The judge stated that he had been provided by the appellant with a proof of posting for an item sent by recorded delivery. The address on the copy envelope was an avenue in Wembley. He noted that the letter said to be sent by UKBA to the appellant was dated 27 July 2012, and the address at the top of the letter was a different address in Wembley. The appellant has not explained or provided any proof of when he changed address, or when he notified UKBA of this change of address.
8. The judge said that the appellant was given 60 days to find a new college and submit a new CAS and application. The letter was dated 27 July. However, the appellant states he received the letter on 3 September 2012. The respondent did not check and refuse his application until 27 February 2013. 60 days from 3 September 2012 is 2 November 2012. The application was not decided until 27 February 2013. The judge found that the appellant in fact had 177 days from the claimed receipt of the letter from UKBA.
9. He also noted that the appellant made an application according to UKBA on 21 September to vary his leave with a new sponsor, but did not obtain a CAS. The

appellant has not explained why, and no documents have been provided by him, to evidence why a CAS was not obtained. The judge found in the circumstances that the appellant had had ample opportunity to submit a new application, even taking the starting date from the date he provided as to when he received the letter.

10. The judge refused the appellant's appeal under Article 8 of the ECHR. He found that the respondent's decision to remove the appellant under Section 47 was unlawful.
11. Permission was granted to the appellant on the basis of his submissions that the letter dated 27 July 2012 which was sent to him giving him 60 days specified an expiry date of 25 September, so that he was not able to do all that was required during that time in relation to the English language test requirements and the maintenance requirements and that if an appellant did not have these requirements, then no college was in a position to issue him with a CAS, which is what transpired. Once he went past 25 September no college would issue him with a CAS.
12. For the hearing today the appellant submitted a witness statement dated 11 October 2013. He stated at paragraph 3 that he received a letter from the Home Office on 3 September 2012 to submit an application to vary the grounds of his original application and that the deadline to submit his application was 25 September 2012. He confirmed that he had submitted an application on 21 September 2012, but without maintenance, English results and CAS as it was not practically possible for him to prepare and appear for an English test, maintain the money for 28 days in 21 days, and get a CAS from a Home Office Tier 4 approved college.
13. In paragraph 4 he stated that he changed his address in June 2012 and called the Home Office helpline to update his address. However, the Home Office again sent the 60 days letter to his previous address by recorded delivery, which was returned back to the Home Office as he was no longer living there. Some time in August, he called his landlord and asked him if there was any post for him as he was worried because he had not received any communication from the Home Office for more than fifteen months. The landlord informed him that there was one recorded delivery for him which was sent back to the Home Office as he was no longer living at the address. He immediately called the Home Office helpline and they confirmed that they had sent a parcel to his previous address and it was returned back to them. He requested the Home Office to send it back to him at his new address, and it was after that he received the letter dated 27 July 2012 on 3 September 2012.
14. In paragraph 5 he said that he booked an English test on 5 September 2012 and appeared for the test without his original passport as his passport was with the Home Office. The test centre would not allow him to appear for the English test without the original passport. However, upon showing them the Home Office-attested copies of his passport, Synergy Business College allowed him to appear for the test, but did not give him his results despite contacting them on many occasions. As a result he decided to retake the English exam on 9 January 2013, but he was not allowed to retake it without his original passport. He managed to book for his test

again on 19 March 2013, and after many requests and verifications he finally was able to take the test and achieve the required B2 level.

15. He stated that he received two letters from the Home Office dated 5 November 2012 and 19 December 2012 requesting him to provide the original documents to consider his application, but unfortunately it was not possible to provide the documents as he did not have the English language results and there was no letter from the Home Office giving him permission to vary his application to show to the college to enable them to issue him with a CAS. He said that the Home Office has failed to give him 60 days as per the policy to vary his application for leave to remain and instead give him 22 days to vary his leave to remain, which in itself was not compliant with the law.
16. At the hearing, I gave Ms Holmes an opportunity to contact the Home Office to find out whether the Home Office received notification of the appellant's change of address, and when. She returned with a schedule which showed the following: between 11 April 2011 and 11 August 2011, their records showed that the appellant was living at 92 Wyld Lane, Wembley. From 11 August 2011 to 30 August 2012 he was living at 37 Mostyn Avenue, Wembley. From 30 August 2012 the appellant's address has been 25 Nettleden Avenue, Wembley.
17. Ms Holmes said the letter dated 27 July 2012 was sent to 37 Mostyn Avenue a few times and the records showed that on 2, 15, 16 and 28 August the letter was returned to the Home Office on those dates, stating that the appellant was not known at the address.
18. Ms Holmes also confirmed what Ms Hashimi had said, and it was this: that the 60 day period expiring on 25 September 2012 was maintained when the letter was finally received by the appellant on 30 September 2012. In fact it was the same letter dated 27 July 2012 that was sent to the appellant at his current address.
19. I accept Ms Hashimi's submission that the appellant informed the respondent of his change of address via the UKBA change of address/representative website. That was the same method he used to inform the respondent when he moved from 92 Wyld Lane to 37 Mostyn Avenue.
20. What concerns me most is the fact that the respondent did not alter the expiry date of the 60 period when they resent the letter of 27 July 2012 to the appellant, which he received on 3 September 2012. The respondent should have been aware that the appellant would have had only 22 days to comply with the requirements of the Immigration Rules in respect of his Tier 4 application. By not extending the 60 day period, the appellant was put in a very difficult position and that meant that he could not comply with the requirements of the Immigration Rules. I find in the circumstances that the respondent had acted unfairly towards the appellant.

21. I find that the judge erred in law when he found that the appellant had 177 days from the claimed receipt of the letter from UKBA because the application was not decided until 27 February 2013. In this case I find that the crucial date was not the date the respondent decided the application but the variation of the expiry date of the 60 days. As the expiry date was not varied, the appellant had 22 days which was insufficient to enable him to do all that he was required to do in order to comply with the Immigration Rules.
22. I find that the judge's decision cannot stand.
23. I allow the appellant's appeal to the extent that it is remitted to the respondent to resolve this matter.

Signed

Date

Upper Tribunal Judge Eshun