



**Upper Tribunal  
(Immigration and Asylum Chamber)**

**Appeal Number: IA/33826/2014**

**THE IMMIGRATION ACTS**

**Heard at Manchester Piccadilly  
On 9 April 2015**

**Decision Promulgated  
On 22 April 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**JEROME EJAIRU OGUJOR  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: not represented

For the Respondent: Mr G Harrison Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Lloyd-Smith promulgated on 14 November 2014 which dismissed the Appellant's

appeal a refusal of leave to remain as a Tier 4 (General) Student Migrant on all grounds .

### Background

3. The Appellant was born on 28 June 1984 and is a national of Nigeria. The Appellant arrived in the United Kingdom on 13 October 2012 with entry clearance as a Tier 4 (General) Student until 17 January 2014 and the course of study he completed was at Metro College of Management Science.
4. On 16 January 2014 the Appellant applied for further leave as a Tier 4 (General) Student Migrant to complete a further course of study at the same college.
5. On 13 August 2014 the Secretary of State refused the Appellant's application because he could not be awarded the points claimed as he did not have a valid CAS.

### The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Lloyd-Smith ("the Judge") dismissed the appeal against the Respondent's decision after considering the papers without a hearing. The Judge found :
  - (a) The chronology was as set out in the Refusal Letter.
  - (b) The Appellant did not have a CAS but relied on an email from the Home Office Suspension and Revocation Team sent to another individual which '*advises that an application be made without a valid CAS.*'
  - (c) The Judge found that she could not be sure that the content of the email would be applicable to this Appellant.
  - (d) Without a CAS the application and the appeal could not succeed under the Rules.
  - (e) Article 8 did not assist the Appellant.
7. Grounds of appeal were lodged and on 21 January 2015 First-tier Tribunal Judge Holmes gave permission to appeal stating that '*it was arguable that the decision making process was vitiated by unfairness.*'
8. Mr Harrison on behalf of the Respondent conceded that having reviewed the file there was an error of law in the decision in that there was procedural unfairness. The email relied on by the Appellant was addressed to the College and therefore applied to all of the students and advised them that they could submit their leave applications without a valid CAS and the applications would be placed on hold until a final licence outcome had been achieved. He accepted that to then refuse on that basis without notifying the Appellant of the outcome of that process and giving the Appellant an opportunity to find another CAS was unfair.

### Finding on Material Error

9. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law.
10. This was an in time application dated 16 January 2014 by the Appellant who was at the time a student at Metro College Manchester for further leave to study at the same College as a Tier 4 student on a course from 3 February 2014 to 3 February 2015. The application was made by the Appellant without a valid CAS. He was aware that he had no CAS but was acting on the basis of an email dated 3 January 2014 that is at page 12 of the Respondent's bundle addressed to Metro College Manchester (not 'another individual' as the Judge asserts) which said:

"Regarding your current students extensions, while your license is suspended our system simply does not allow us the grant any additional CAS under any circumstances.

However, these students may still submit their leave to remain applications without a valid CAS. I suggest that you submit a covering letter along with these applications explaining the current situation, the applications will then be placed on hold until a final licence outcome has been reached."

11. The covering letter from the College is found at page 13 of the bundle and is part of his offer letter and refers to the email at page 12 and therefore confirms that the application for the course in the Appellant's name could be submitted without the CAS and would then be put on hold. Thus while the Judge found that she could not be sure the contents of the email applied to this Appellant it was clear from the covering letter which incorporated an offer in his name that it did.
12. I am satisfied that in paragraphs 6 and 7 therefore the Judge fell into error in stating that neither the email or covering letter were before her or indeed applied to this Appellant : both were in the Respondent's bundle and it was clear they applied to the Appellant .
13. The failure of the First-tier Tribunal to address and determine whether the Appellant had been advised by the Respondent that he could submit an application without a CAS constitutes a clear error of law as it led to her not considering whether the Appellant had been treated fairly. This error I consider to be material since had the Tribunal conducted this exercise the outcome could have been different. That in my view is the correct test to apply.
14. I therefore found that errors of law have been established and that the Judge's determination cannot stand and must be set aside in its entirety.
15. Mr Harrison had no further submissions to make.

### Remaking the decision.

16. This was an in time application for further leave to remain as a student where the Appellant was aware he had no CAS. I am satisfied that he submitted his application having been advised by his College that the license for the College had been suspended but that the Respondent had advised that the applications would be

accepted without a CAS and kept on hold until the decision on the College was finalised.

17. I accept that the Appellant was not advised that the decision in relation to the College had been finalised until his application was refused.
18. I am satisfied that it was unfair having positively invited the Appellant to make an application without a CAS and having told the Appellant that his application would be 'on hold' until a final decision was made about the College it was procedurally unfair to refuse the application without giving him the opportunity to find an alternative CAS having made such a decision.
19. Given the difficulty of obtaining a CAS without a passport which Mr Harrison confirmed was still with the Respondent I trust that it will be returned to the Appellant to allow him to make such alternative arrangements within a 60 day period.

### **Conclusion**

20. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
21. I set aside the decision
22. I remake the decision in the appeal by allowing it to the extent that it remains outstanding before the Secretary of State.

Signed

Date 9.4.2015

Deputy Upper Tribunal Judge Birrell