The Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: IA218532015
IA218602015

THE IMMIGRATION ACTS

Heard at Field House
On May 23, 2016

Decision & Reasons Promulgated
On May 25, 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MRS LILY BHANDARI
MR PRAKASHCHANDRA SODARI
(NO ANONYMITY DIRECTION)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
Appellant — Mr Uppal (Legal Representative)
Respondent — Ms Brocklesby-Weller (Home Office Presenting Officer)

DECISION AND REASONS

1. The Appellants are citizens of Nepal. The appellants are husband and wife. The first-named appellant entered the United Kingdom on October 22, 2009 with leave to enter from October 22, 2009 until May 21, 2011 as a Tier 4 (General) Migrant. This leave was subsequently extended until June 28, 2014. Her husband was granted leave, as a spouse dependant, at the same time and his leave had been extended to coincide with his wife's leave.

2. On October 26, 2012 they lodged an application to extend their stay as Tier 4 (General) Migrant and dependant but the first-named appellant later discovered that the CAS she had submitted was fraudulent. The respondent's decision was delayed because the first-named appellant assisted the authorities with their enquiries. On November 18, 2013 the first-named appellant submitted a further Tier 4 application with a fresh CAS from Grenville College.

3. The respondent wrote to the appellants on March 13, 2015 advising the first-named appellant to submit a fresh CAS because Grenville College's licence was revoked. She was given sixty-days to obtain a fresh CAS certificate in line with the respondent's stated policy.

4. On May 12, 2015 the appellants' solicitors wrote to the respondent explaining that the first-named appellant had tried to obtain a CAS from various colleges and universities but had been unsuccessful because "sessions" had already started. The letter also mentioned that the colleges/universities had asked for an explanation for the delay. The solicitor suggested that the respondent should have sent a letter, explaining the problems, with the March 13, 2015 letter and that it would be unfair and unjust not to extend the sixty-day period further.

5. The respondent refused their applications on May 26, 2015 as the first-named appellant did not have a CAS certificate and took decisions to remove them pursuant to Section 47 of the Immigration, Asylum and Nationality Act 2006.

6. The appellants appealed the decisions to remove them on June 10, 2015 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.

7. The appeals came before Judge of the First-tier Tribunal Turquet (hereinafter referred to as the Judge) on September 23, 2015 and in a decision promulgated on October 8, 2015 she refused their appeals under both the Immigration Rules and article 8 ECHR.

8. The appellants lodged grounds of appeal on October 19, 2015 submitting the First-tier Judge had erred. It was argued the Judge had erred because she did not deal with failure to consider representations in letter of May 12, 2015 and failed to consider whether the refusal letter was defective.

9. Judge of the First-tier Tribunal Grant-Hutchinson granted permission finding both grounds arguable.

10. In a Rule 24 letter dated April 15, 2016 she argued the Judge was aware of the issues as set out in paras 7-8 of the decision. At paragraphs 18-19 of the decision the Judge considered the evidence and case law and considered the immigration history but for reasons given in para 19 found against the appellant.

11. The matter came before me on the above date and I heard submissions from both representatives after which I reserved my decision.

12. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I make no order.

SUBMISSIONS

13. Mr Uppal adopted the grounds of appeal and submitted the letter dated May 12, 2015 had been supported by a statement that was found on pages 24 and 25 of the appellant's bundle. He submitted that in the circumstances the standard sixty-day extension was not sufficient bearing in mind it took 2 ½ years for the respondent to make a decision on the application. The appellant was entitled to an explanation for the delay and the respondent had not done this in her refusal letter.

14. Ms Brocklesby-Weller relied on the Rule 24 response and submitted the respondent was under no obligation to explain the delay in circumstances where the appellant had been given an extension to provide a CAS certificate. The appellant had evidence to provide to colleges and/or universities as she had correspondence contained in the bundle. There was no legal requirement to provide what the appellant was asking for and the problems experienced by the appellant had nothing to do with the respondent. The refusal letter was compliant with the respondent's own policy and following the decision in EK (Ivory Coast) [2014] EWCA Civ 1517 the respondent had applied the same formulated approach to this appeal as they would to others. The Judge was aware of the problems and the first-named appellant's explanation but reached a decision open to her. The respondent reached a fair decision and the Judge was entitled to back that stance in circumstances where the blame for the CAS issues was not the respondent's.

DISCUSSION AND FINDINGS

15. The first-named appellant applied to extend her stay as a Tier 4 (General) migrant. The second-named appellant's appeal was contingent on the first-named appellant's appeal succeeding.

16. In this case the respondent initially gave the appellant a sixty-day extension to submit a fresh CAS certificate because her current sponsor's licence had been revoked.

17. The first-named appellant had experienced a number of problems with her education in the United Kingdom-a fact recognised by the Judge in her decision. She noted the appellant arrived in October 2009 to undertake an MBA course. The college she attended at went bankrupt so switched course and commenced an ACCA course at the London College of Theology. Their licence was revoked and she then went to a consultant who gave her the fake CAS enabling her to study law at Kings College, London. She then obtained a CAS for Grenville College to study a diploma in health care management but as became clear that college's licence was also revoked. The Judge concluded she had done very little, education wise, since being here and had hopped from one course to another without explaining why.

18. At the hearing I clarified with Mr Uppal whether the appellant had submitted any rejection letters or requests for further information from any college or university and he indicated that no college had set out their position in writing. There was therefore no evidence before the Judge other than the appellant's own evidence.

19. Mr Uppal's argument today is that the respondent should have given reasons for the delay in dealing with the appellant's application and that by failing to do so the respondent treated the appellant unfairly. Mr Uppal did not provide me with anything that supported his argument that reasons for delay had to be spelt out in the refusal letter.

20. The Judge was dealing with an application by the first-named appellant to continue her studies. She needed a CAS certificate and failed to produce one. Her failure to obtain one was not the respondent's fault. The cases of EK (Ivory Coast) [2014] EWCA Civ 1517, Thakur (PBS decision-common law fairness) Bangladesh [2011] UKUT 151, Patel and others [2013] UKSC 72 all talk about fairness. Where the fault does not lie with the appellant then an extension should be granted and the respondent's policy is to grant a two-month extension. This extension was given to the appellants.

21. At paragraph [33] of EK Sales LJ said-

> "I do not consider that an approach by the Secretary of State which involves a simple check whether an applicant has in place a valid CAS letter at the time the decision is made on their application, rather than seeking to inquire further into the background if it appears that a CAS letter has been withdrawn, involves any unfairness to an applicant for which the Secretary of State bears responsibility. The PBS places the onus of ensuring that an application is supported by evidence to meet the relevant test for grant of leave to enter or remain upon the applicant, and the Immigration Rules give applicants fair notice of this. The essence of the CAS element within the PBS is that the Secretary of State relies on a check on certification by approved colleges, and does not have to investigate further. It is inherent in the scheme that an applicant takes the risk of administrative error on the part of a college."

22. It was not disputed that a sixty-day policy extension exists. In Naved (Student – fairness – notice of points) [2012] UKUT 14 (IAC) the Tribunal stated-

> "Fairness requires the Secretary of State to give an applicant an opportunity to address grounds for refusal, of which he did not know and could not have known, failing which the resulting decision may be set aside on appeal as contrary to law …".

23. The delay in dealing with this appeal would not have altered the fact there was no CAS certificate. Putting a paragraph in the letter may have told the appellant that the respondent was aware of the delay but ultimately this application was refused because the appellants failed to provide the CAS within the extended period allowed. Nothing was adduced to the Judge nor myself suggesting the respondent's decision is unlawful because delay was not explained.

24. Although I sympathise with the appellants' predicament I am not persuaded the Judge approached their appeal incorrectly.

25. If no extension had been given, then the position would have been different. However, the fact the appellant was unable to provide a CAS within the sixty-day period and failed to put forward any evidence that the delay prejudiced her obtaining a CAS draws me to the conclusion that the Judge did not err in this appeal.

26. The Judge was clearly aware of all of the arguments but rejected the arguments advanced by the appellants. Her findings were open to her and there is no error in law.

DECISION

27. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the original decision.

Signed: Dated:

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

No fee order is made.

Signed: Dated:

Deputy Upper Tribunal Judge Alis