



IAC-AH-KEW-V1

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

Appeal Number: IA/27491/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 16<sup>th</sup> March 2016**

**Decision & Reasons  
Promulgated  
On 14<sup>th</sup> April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW**

**Between**

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

Appellant

**and**

**MR MUHAMMAD TABISH IQBAL  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Claimant: Mr E Tufan, a Home Office Presenting Officer  
For the Respondent: Mr S Bellara of Counsel

**DECISION AND REASONS**

**Introduction**

1. This is an appeal by the Secretary of State for the Home Department (“the Secretary of State”) against the decision of the First-tier Tribunal which allowed the appeal of Mr Iqbal (“the claimant”). The claimant had appealed against the respondent’s decision taken on 19 June 2014 to

refuse to vary his leave as a Tier 4 (General) Student and to remove him by directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. The Secretary of State had considered that the claimant did not meet the requirements for 30 points for a Confirmation of Acceptance of Studies (CAS) because the CAS had been withdrawn by the sponsor.

### **The Appeal to the First-tier Tribunal**

2. The claimant appealed to the First-tier Tribunal. In a decision promulgated on 15 September 2015 First-tier Tribunal Judge Roopnarine-Davies allowed the claimant's appeal. The First-tier Tribunal found that the claimant did not know that the college's licence was suspended and did not have an opportunity of enrolling at another college by the date of the decision. The judge found that the claimant's case was on fours with the case of **Patel (Revocation of Sponsor Licence - Fairness) India [2011] UKUT 00211 (IAC) ("Patel")**. The judge found that the claimant was in possession of valid CAS from an approved sponsor at the time of the application in April 2014 and that fairness required that the claimant be given an opportunity to apply to another sponsor college. The judge allowed the appeal to the limited extent that the Secretary of State's decision was not in accordance with the law. The judge directed that any fresh decision was not to be made for a period of 60 days from the date of the decision.

### **The Appeal to the Upper Tribunal**

3. The Secretary of State sought permission to appeal to the Upper Tribunal. The grounds of appeal assert that the First-tier Tribunal erred in law in finding that the Secretary of State had not acted fairly. It is asserted that the claimant was not disadvantaged by matters of fairness falling within the remit of the case of **Patel** and was not therefore entitled to 60 days' leave. On 28 January 2016 First-tier Tribunal Judge McDade granted the Secretary of State permission to appeal. Thus, the appeal came before me.

### **Summary of Submissions**

#### **The Secretary of State's Submissions**

4. The Secretary of State asserts that the claimant did not submit a valid CAS with his application and therefore did not meet the requirements of paragraph 117 of Appendix A of the Immigration Rules. The Secretary of State asserts that the CAS had been withdrawn by the claimant's sponsor. The Home Office had not suspended or revoked the sponsor's licence and then not informed the claimant. It is not clear therefore what issues of fairness apply. It is asserted that the circumstances in this case do not fall within the remit of the case of **Patel** and that the Tribunal therefore erred in law by finding that the respondent had not acted fairly.

5. Mr Tufan submitted that when the CAS was checked by the Secretary of State it had already been withdrawn and that this was prior to any suspension or revocation of the sponsor college's licence. He relied on the case of **EK (Ivory Coast) v Secretary of State for the Home Department [2014] EWCA Civ 1517** and the case of **Kaur v Secretary of State for the Home Department [2015] EWCA Civ 13 ("Kaur")**. He submitted that the **EK** case was determinative of the issue. In that case the claimant's CAS had been withdrawn by the college and even though that withdrawal was an administrative error the court still dismissed the appeal. The Secretary of State was not a party to what had happened. He relied on paragraphs 25, 28 and 32 and submitted that the PBS system's integrity should not be disturbed by matters outside the Secretary of State's control. He asserted that the case of **Naved v Secretary of State for the Home Department [2012] UKUT 14 (IAC)** is often relied upon by appellants. However, at paragraphs 39 and 40 the court in **EK** disagreed with the **Naved** case. He submitted that the case of **Kaur** at paragraphs 40 and 42 sets out that in the case of **EK** the matter was correctly decided.
6. In reply Mr Tufan submitted that there was no nexus between the suspension and the withdrawal of the CAS. Therefore, whether or not the subsequent suspension occurred around the same time was not material. He submitted that in **EK** it was concluded that the **Naved** case was wrongly decided.
7. Mr Tufan submitted that if there was no valid CAS the claimant could not have made an application. The fact was that before the decision was made by the Secretary of State the CAS had been withdrawn by the college.

#### Submissions of the Claimant

8. Mr Bellara submitted that although it may appear that the judge has misapplied **Patel** the judge did in fact make a correct application of the case. He referred to paragraph 4 where, he submitted, the judge considered all the evidence. He submitted that we do not know the date when the college was first under suspension. We know that the college lost its licence in February. However, the college would have been under suspension prior to that time. At paragraph 6 the judge was entitled to make the inference from the evidence that the college's suspension was taken by the respondent at the same time as the refusal decision. On that basis the claimant's case did fall within **Patel**. He submitted that the inference was open to the First-tier Tribunal Judge to make from the evidence. He submitted that it was very unclear when the suspension came into force. He submitted that it was open to the respondent to make a further decision and that the judge had simply remitted the matter for a properly reasoned decision to be made. He asserted that the claimant was simply unaware that the CAS had been suspended. He submitted that

it was open to the judge to have adjourned the matter but, by directing that any fresh decision should not be made for a period of 60 days, in essence the Tribunal has asked the Secretary of State to re-make the decision.

9. Mr Bellara submitted that at paragraph 6 the Tribunal Judge found that the claimant was in possession of a valid CAS at the time of the application. It was only when the Secretary of State conducted the checking service on 19 June 2014 that it was ascertained that the CAS had been withdrawn.

## **Discussion**

10. The First-tier Tribunal judge appears to have proceeded by considering the appeal on the basis that the sponsor college's licence was suspended *"from the list of approved sponsors by the respondent during the time it was considering the application"* or *"at the same time as the refusal decision"*. The judge also appears to have considered that the claimant *"first learnt that the college's licence was (sic) from the refusal letter was not challenged"*.
11. The judge considered that the facts of this case were on all fours with the case of **Patel**.
12. The Secretary of State was unable to confirm at the hearing before the First-tier Tribunal the date on which the college's licence was suspended. The licence was revoked on 6 February 2015 some 8 months after the date of the Secretary of State's decision. The Secretary of State was not able to confirm at the hearing before me the date that the college's licence was suspended. Mr Bellara submitted that the judge entitled to make the inference from the evidence that the college's suspension was taken by the respondent at the same time as the refusal decision. The judge has not indicated why the evidence led to such an inference. Although it logically follows that the licence would have been suspended at some time prior to the licence being revoked there is nothing in the evidence that would indicate that it was at the same time or during the time the Secretary of State was considering the claimant's application. The evidence would suggest that the college's licence had not been suspended as at the date of the decision as there is no mention in the reasons for refusal letter of the College's licence having being suspended. Further, the judge was incorrect to conclude that the claimant first learnt of the suspension from the refusal letter as clearly there was no mention in that letter of a suspension of the college's licence. The evidence was that the claimant first learnt of the suspension was after he received the refusal letter when he spoke to the college administration (claimant's witness statement dated 27/8/15 paragraph 4).
13. The judge has failed to engage at all with the fact that the claimant's CAS was withdrawn by the college and that this was the sole reason for the refusal of his application.

## 14. The reasons for refusal letter sets out:

“The Confirmation of Acceptance for Studies Checking Service was checked on 19 June 2014 and it confirmed that the CAS, with reference number E4G2PY8D16JOM6, that you submitted with your application has been withdrawn by the sponsor. As such you fail to meet the requirements of paragraph 117(b) of appendix A to the Immigration Rules and therefore you are not in possession of a valid CAS.”

15. The sole reason for refusing the application was on the basis of the withdrawal of the CAS by the college. The withdrawal of the CAS was initiated by the college. It was not argued that the Secretary of State’s was incorrect in her assertion that the CAS was withdrawn by the college. Whether or not the Secretary of State was investigating the college at that time, I accept Mr Tufan’s submission that there was no nexus between any investigation and the Secretary of State’s decision. The decision was based on the withdrawal of the CAS by the college, not as a result of anything done by the Secretary of State. Any unfairness to the claimant could only have arisen as a result of the college’s actions. The instant case is not therefore on all fours with the case of **Patel**. The judge did not consider the case of **EK**. In **EK** the claimant’s CAS had been withdrawn by the college by mistake. It is not known in this case whether or not the claimant’s college had mistakenly withdrawn the CAS or had done so for good reason. Even if the CAS had been withdrawn by mistake as held in **EK** the Secretary of State is not responsible for any ensuing unfairness. The Court of Appeal held:

“25. However, in my judgment, there was no breach by the Secretary of State of her public law duty to act fairly in considering the Appellant's application for leave to remain. The Secretary of State is not responsible for the general unfairness which the Appellant has suffered. That is the result of actions and omissions by St Stephen's. There is no basis on which any of the decisions of the Secretary of State, the FTT and the Upper Tribunal can be impugned as unlawful...”

56. But the question whether the Secretary of State breached her common law duty to act fairly depends critically upon what her officials might be supposed to have known or considered likely, at the time when, probably shortly before making the decision, the withdrawal of the CAS letter became apparent. At that stage neither they nor, probably, anyone at the College itself was aware that a mistake had been made. As Sales LJ points out, the ordinary expectation of the Secretary of State on becoming aware of the withdrawal of a CAS letter would be that the sponsoring college had done so for good reason and, I would add, duly informed the applicant student of its decision to do so. A cancellation by mistake, coupled with a failure to inform the applicant student would, I would have thought, reasonably be regarded by those charged with the operation of the PBS scheme as a rare occurrence.”

16. The judge has erred by failing to approach the case on the basis that the reason for the decision was solely based on the fact that the college had withdrawn the claimant’s CAS. There was no nexus between the Secretary

of State's decision and any suspension of the sponsor college's licence. The judge therefore erred in concluding that the decision was on all fours with the case of Patel. The decision of the First-tier Tribunal contained material errors of law. I re-make the decision. For the reasons set out above there was no unfairness on the part of the Secretary of State in refusing the claimant's application. The appeal of the Secretary of State is allowed. The decision of the Secretary of State stands.

**Notice of Decision**

The Secretary of State's appeal is allowed. The decision of the Secretary of State stands.

I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

Signed P M Ramshaw

Date 11 April 2016

Deputy Upper Tribunal Judge Ramshaw