



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

Appeal Numbers: IA/39225/2014  
IA/39226/2014  
IA/39227/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13 July 2016**

**Decision & Reasons Promulgated  
On 26 July 2016**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**KANWALDEEP KAUR  
LAKHVIR SINGH  
[D S]  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr P Skinner of Counsel, instructed by ATM Law  
For the Respondent: Mr P Duffy, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Monaghan promulgated on 17 December 2015. Judge Monaghan's decision refused the appellant's appeal against the refusal by the Secretary of State for further leave as a Tier 4 Migrant.
2. The thrust of Judge Monaghan's findings were that he accepted that subsequent to the respondent's decision of 7 August 2014 refusing leave it was found in judicial review that the respondent had acted unlawfully in failing to provide the appellant with her passport. He went on to find that this was not something of material relevance to the decision before the First-tier Tribunal which concerned matters prior to the decision of 7

August 2014, however. The appellant's case on events prior to 7 August 2014 was explained at [38] to [40] of the decision, as follows:

"38. In her said letter dated 28/05/2014 the First Appellant explained she had taken her B2 level 2 English test with City and Guilds on 22/04/2014 and had been expecting the results within four weeks. However she had received only one result namely Speaking and had been told the other three results would come within the next four weeks. As she did not want to overstay, her visa had been due to expire on 31/05/2014 she had completed and was submitting her Tier 4 application and attaching the one result in her possession. She accordingly asked the respondent to hold her application and said that she would send a valid CAS with B2 results in a few weeks time. She did not request a return of her passport so that she might take another test.

39. The First Appellant then wrote to the respondent again whilst her application was pending. The letter was dated 18/07/2014. She was writing to advise that since the removal of approved English language tests by the respondent there had been a very long waiting queue to sit an acceptable English language test. She said that she had taken the English language test by City and Guilds. She had passed all components except the Speaking test. She has undertaken the Speaking exam as well and is awaiting the results which had been delayed by City and Guilds due to heavy workload. She was expecting her second child on 10/08/2014. She requested the respondent to hold her application for 28 days and she would definitely provide a valid CAS. Once again she did not request the return of her passport.

40. The respondent made her decision on the First Appellant's application on 07/08/2014."

3. The appellant seeks to argue that the respondent acted unfairly in not delaying a decision for a longer period in order to allow the applicant to obtain her language test results and so obtain a CAS. She argues that the delay was the respondent's responsibility as many language test providers were no longer registered. She objects to the respondent failing to reply to her letters of 28 May 2014 and 18 July 2014. Judge Monaghan found against her on these arguments.
4. Certainly, the evidence shows that prior to the decision on 7 August 2014 which refused the application for loss of a CAS the appellant had twice informed the respondent that she wanted more time as her English language test results had been delayed.
5. That did not entitle her to a longer period to obtain those documents. The Immigration Rules required a CAS to be provided with the application so when the appellant did not have one at that time her application already fell to be refused. She was not entitled to any further time to obtain a CAS.

6. In her letters to the respondent the appellant did not indicate that the organisation with whom she had taken the language test, Harrow International Business School had at any time been found by the respondent not to be a valid provider of English language tests so as to explain any delay there. In fact Harrow International Business School provided a letter dated 7 May 2014 stating that they expected the results within 28 days of the appellant taking the test on 22 April 2014. There was nothing further from them either to indicate that there was a problem that the Secretary of State could have or should have taken into account.
7. The applicant also did not provide the respondent or the Tribunal with any information showing that the college was in difficulty in providing her with her course results because of any action by the respondent as regards other English language test providers, making it very difficult for Harrow International Business School to cope with the number of students seeking to take English language tests.
8. It is not my view that common law fairness required the respondent to delay her decision at all. She did not make a decision for some 2 months and 7 days after the application for further leave. No CAS had been provided by that time. The respondent was entitled to refuse the application.
9. No reason other than delay in obtaining a language test result was put forward. The information about that was confused, the first letter stating that the speaking element had been passed but the others not, the second stating that the others had been passed and only speaking had not. The difficulty in obtaining a language test result was not stated to be because of the test provider being unregistered or a general problem with numbers within the system. Nothing in the materials from before 7 August 2014 indicated that the delay had anything to do with failure to provide a passport. The appeal before Judge Monaghan rightly failed, therefore.
10. For those reasons, I do not find an error of law in the decision of the First-tier Tribunal.

### **Notice of Decision**

The determination of the First-tier Tribunal does not disclose an error on the point of law and shall stand.

Signed   
Upper Tribunal Judge Pitt

Date 25 July 2016