IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/43679/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3 March 2016	**On 21 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

KIRANKUMAR R VAGHELA
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Bellara of Counsel, instructed by AH Solicitors
For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Andonian promulgated on 3 August 2015.

2. Although before me I only have one appeal in the name of Mr Kirankumar Vagheela it is the case that he has two dependants, his wife and daughter, and the outcome of this appeal will necessarily also impact upon their respective positions as his dependants, both in general terms and in immigration terms.

3. It is unnecessary for present purposes to rehearse the entire immigration history of the Appellant. Suffice to say for present purposes that the

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current appeal arises in circumstances of an application for variation of leave to remain as a Tier 4 (General) Student. The Appellant who had previously had leave as a Tier 4 (General) Student made an application for further leave on 1 September 2014, which was in due course refused by the Secretary of State for the Home Department on 14 October 2014.

4. In support of his application the Appellant indicated on his application form that he was seeking leave to remain to pursue a course leading to a Diploma in Health Care Management at Level NQF7, being a one year course running from September 2014 until September 2015 at an institution called the UK Business College. He also expressly indicated on his application form that he did not have a Confirmation of Acceptance for Studies ('CAS').

5. The Appellant submitted with his application a letter from the UK Business College, also dated 1 September 2014, which is headed "*Conditional Letter*", and in material part is in these terms:

> "*Thank you for your application at UK Business College. I am pleased to conditionally offer you a place into the following courses below Subject to the terms and conditions of Registration and Enrolment.*"

There then follows the details of the course, its fees, and the maintenance and living costs, before the letter ends

> "*We look forward to welcoming you to the UK Business College. You can find information about studying at UK Business College on our website. You will be studying on a full-time basis which consist of a minimum of 16 hours per week of organised daytime study.*"

6. No reference is made in that conditional offer letter of a CAS.

7. In those circumstances it is perhaps not surprising that when the Secretary of State's decision-maker came to consider the Appellant's application the absence of a CAS was identified and in consequence the Appellant was awarded 0 points; further, in turn, because there was no specific course identified, it was not possible to award any points for maintenance. The Appellant's application was therefore refused pursuant in particular to paragraph 245ZX(c) of the Immigration Rules, the Appellant was refused variation of leave to remain, and a decision was made to remove him pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006.

8. The Appellant appealed to the First-tier Tribunal. The grounds of appeal that appear on his Notice of Appeal are in generalised terms and do not

specifically address the key issue upon which the Respondent determined his application. Before the First-tier Tribunal there was evidence by way of a witness statement dated 6 July 2015 in which the Appellant gave a history of the difficulties that he had had in respect of his studies at a previous institution called Williams College, where he had attended up until March 2014. It appears that this institution was taken off the Home Office's Register of Approved Sponsors; the Appellant suggests that this was for reasons connected with the college manipulating information in respect of attendance figures that it was giving to the Home Office.

9. Be that as it may, the Appellant otherwise indicated in his witness statement that he had been able to enrol in the UK Business College, but that this was a conditional offer. He says in his witness statement that they gave him "*conditional offer if the Home Office would have asked to submit a fresh CAS for you then there are ready to issue CAS*". As I say, there is no specific reference possibly to providing the Appellant with a CAS in the UK Business College's 'conditional letter', and I am unable to identify any other supporting evidence that that was the college's position.

10. For reasons set out in his decision First-tier Tribunal Judge Andonian essentially upheld the decision of the Respondent: indeed as was acknowledged by Mr Bellara today, the Appellant could not meet the requirements of the Immigration Rules in the absence of a CAS, and such a concession was made before Judge Andonian.

11. The First-tier Tribunal Judge also dismissed the appeal on Article 8 grounds.

12. The Appellant applied for permission to appeal to the Upper Tribunal which was in the first instance refused by First-tier Tribunal Judge Frankish on 1 December 2015 but was granted on renewed application by Upper Tribunal Judge Bruce on 18 December 2015.

13. In granting permission to appeal Judge Bruce identified that the Appellant had apparently been acting in person in the context of the application for permission to appeal - although he had previously had the benefit of representation before the First-tier Tribunal - and to that extent she gave particular scrutiny to the overall substance of the case. Judge Bruce said this in granting permission to appeal:

> "*1. The grounds have been settled by the Appellant, and with this in mind I have read the determination of the First-tier Tribunal with especial care. The grounds are in the most part a complaint about the conduct of the Appellant's Tier 4 Sponsor,*

and to some extent the challenge faced by Tier 4 Migrants of having to pay non-refundable course fees without knowing whether the chosen college will remain operational until the end of the course. None of these points raise an arguable error of law in the decision of the First-tier Tribunal.

2. In respect of the human rights of the Appellant and his family the determination is brief but on the facts before the Judge the decision could not have been otherwise. None of them met the requirements of the Rules and no particularly compelling circumstances are identified such that leave outside the Rules would be justified.

*3. The grounds do however raise one arguable issue. The Appellant was refused further leave to remain because his CAS was not valid, his Tier 4 Sponsor having lost its licence. It is arguable that in these circumstances the First-tier Tribunal should have considered whether the appeal could be allowed on the limited grounds that the decision was not in accordance with the law for failure to issue the Appellant with a '60 day letter': **Patel (Revocation of Sponsor licence – fairness) India [2011] UKUT 00211 (IAC)**."*

14. Mr Bellara before me has not sought to go behind the Judge's observations that to a large extent the Appellant's challenge to the outcome of the proceedings before the First-tier Tribunal was based on generalised criticisms and complaint concerning his Tier 4 Sponsor - and in that regard in particular the complaint primarily relates to the college at which he ceased to study in March 2014, approximately five to six months before the date of his application for variation of leave to remain. Nor does Mr Bellara seek to make anything further in respect of any potential Article 8 issues. The focus before me has indeed been on the potential applicability of the reasoning in the case of **Patel** to the facts herein.

15. It is appropriate to note at the outset of my own considerations that, with the benefit of more time to consider the Appellant's application and appeal than perhaps is usual for a Judge when considering matters at the permission to appeal stage, it is possible to identify that Judge Bruce was in error in referring to the Appellant's CAS as being "*not valid*". This was not a case of the **Patel** type - not infrequently seen - where a CAS had been submitted with the application but which had subsequently become invalid by reason of the course provider being removed from the register of approved sponsors. Rather, this was a case where no CAS was submitted with the application at all. For my own part it seems to me that if this had been perhaps more clearly understood at the time of considering the grant of permission to appeal, it is likely that permission to appeal would not have been granted.

16. In the event this significant factual distinction between the circumstances of this case and the circumstances that informed the deliberations of the Tribunal in **Patel** is, in my judgment highly material - indeed to an extent that it becomes impossible to say that the principles in **Patel** apply to the Appellant's case.

17. In this regard I simply remind myself of what is said in the headnote in **Patel** to the following effect at paragraphs 2 and 3:

> *"2. Where a sponsor licence has been revoked by the Secretary of State during an application for variation of leave and the applicant is both unaware of the revocation and not party to any reasons why the licence has been revoked, the Secretary of State should afford an applicant a reasonable opportunity to vary the application by identifying a new sponsor before the application is determined.*
>
> *3. It would be unfair to refuse an application without opportunity being given to vary it under s.3C(5) Immigration Act 1971."*

18. It is to be emphasised that the consideration in **Patel** related to fairness in the sense of procedural fairness, and the criticism was being made in that case of a practice whereby the Secretary of State upon discovering that a CAS valid at the time of application was invalid at the time of consideration of the same application would then refuse the application without reverting to the Appellant to ensure that they were aware that the CAS was invalid and if appropriate giving them an opportunity to amend the position.

19. It cannot be said that anything approaching that situation pertains here. The Appellant knew at the time that he submitted his application that he did not have a valid CAS, and in my judgement there was no procedural requirement upon the Secretary of State as a matter of fairness or otherwise to give him a further opportunity to attempt to vary his application by submitting a valid CAS.

20. It is not apparent that the Appellant set out in his application in any sort of detail, or at all, the difficulties that he had previously experienced with his previous institution in the same way that he did in his witness statement to the First-tier Tribunal. It is suggested by Mr Bellara - and with respect it seems to me somewhat tentatively - that the Secretary of State should have in effect been on constructive knowledge of the fact that the Appellant's previous institution had had its licence terminated and that this should have informed the Secretary of State, particularly when read

alongside the conditional letter the Appellant had from the UK Business College, to be alert to the potential difficulties that the Appellant was in, and perhaps to make further enquiries of him or to provide him further opportunity to make good his application.

21. It seems to me that that is to expect too much of the Secretary of State in circumstances in particular where, as I say, the Appellant himself did not seek to set out overtly these circumstances, and the conditional letter did not make any reference to the possibility of issuing a CAS in the event that the Secretary of State should say that that was required. The UK Business College if on the register at the time that it issued the conditional letter would have been fully aware that the Secretary of State would have expected a CAS to be submitted with the application: it is curious that in such circumstances the letter is silent on the issue.

22. That said, it seems absolutely clear to me that there was no procedural unfairness in the Secretary of State's approach in dealing with the application that was before her and in finding - as indeed is accepted - that it did not meet the requirements of the Rules. It was not, as a matter of procedural fairness or otherwise, incumbent upon the Secretary of State to do any more than consider the application that was put before her, and I find that no analogy is to be drawn with the case of **Patel** to assist the Appellant.

23. There being no other issues raised by the Appellant the challenge to the decision of the First-tier Tribunal fails. The Respondent's decision was in accordance with the Immigration Rules and otherwise in accordance with the law, as indeed in turn was the decision of the First-tier Tribunal.

Notice of Decision

24. The decision of the First-tier Tribunal contained no errors of law and stands.

25. The appeal is dismissed.

26. No anonymity order is sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed: Date: **8 March 2016**

Deputy Upper Tribunal Judge I A Lewis