



IAC-AH-SAR-V1

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

Appeal Number: IA/48286/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 9 February 2016**

**Decision & Reasons Promulgated
On 8 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**MR OMER AITMAD KHAN LODHI
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K S Ehtesham-Khan (Britain Solicitors)
For the Respondent: Mr N Bramble (Home Office Presenting Officer)

DECISION AND REASONS

1. This is an error of law hearing. The appellant is a citizen of Pakistan. He applied for further leave to remain in the UK on 19 June 2014 as a Tier 4 (General) Student. He appeals a decision and reasons by First-tier Tribunal (Judge J Macdonald) ("FTT") promulgated on 23 June 2015. The appeal was dismissed on the grounds of that there was no valid appeal and thus the FtT had no jurisdiction.

Background

2. It was accepted that the appellant met the specific requirements of Tier 4 (General) Student with reference to paragraph 245ZX having regard to maintenance/funds and points awarded for the CAS. The respondent refused the application on the grounds that the appellant failed to meet the requirements of paragraph 245ZX(a). The appellant failed to attend an interview and it could not be determined whether he was a genuine student. The respondent relied on the general grounds for refusal in paragraph 322 of the Immigration Rules.

FtT hearing and decision

3. The FtT raised a preliminary issue at the hearing. It queried whether or not the appellant had a right of appeal. The application was made on 19 June 2014. The FtT determined that the law in force as at the date of decision, namely 13 November 2014, applied and as a consequence the appellant had no right of appeal (Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended by the Immigration Act 2014). There was no consideration by the FtT of the substantive issues under appeal.

Application for Permission to Appeal

4. The appellant submitted grounds for permission and applied for an extension of time which was granted.
5. The FtT erred in law by failing to consider that the date of application (19 June 2014) was the relevant date and that the substantive changes came into effect on 20 October 2014. The notice of refusal gave the appellant a right of appeal.

Permission to Appeal

6. First-tier Tribunal Fisher found that there was an arguable error of law. The FtT erred by failing to take into account that applications made on or before 19 October 2014 had a right of appeal as confirmed by the notice of decision. (**Ajakaiye (visitor appeals - right of appeal) Nigeria [2011] UKUT 00375 (IAC)**).

Rule 24 Response

7. The Secretary of State opposed the appeal and submitted that the First-tier Tribunal had directed itself appropriately. The appellant did not have a right of appeal because his application for Tier 4 leave was made out of time, which is a separate reason for lack of jurisdiction.

Error of Law Hearing

8. At the hearing before me it was conceded by Mr Bramble on behalf of the Secretary of State that the Rule 24 response was factually incorrect. The appellant made an in time application (his leave having expired on 20 June 2014), and furthermore, it was accepted that the FtT failed to correctly and lawfully determine the appeal having regard to the right of appeal given to the appellant in the notice of decision. Mr Bramble further observed that the FtT failed to deal with the substantive issue, namely the non-attendance at the interview. He was unable to produce evidence confirming the appellant had been invited to attend for an interview and furthermore, any reasons why there were doubts that the appellant was a genuine student given that the CAS had been accepted.
9. Mr Ehtesham-Khan submitted that the appeal should be allowed outright. The appellant had never received any invitation to attend an interview. He further submitted that the respondent needed to show that the appellant had been invited to attend the interview.

Error of Law Decision

10. There was no challenge to the error of law. I decided that there was a material error of law in the decision and reasons. The FtT erred in concluding that the appellant had no right of appeal. The appellant's right of appeal was confirmed in the immigration decision and the FtT had jurisdiction to hear the substantive appeal.
11. Accordingly I set aside the decision and reasons.
12. I heard further submissions from both representatives. I decided to deal with the substantive issue under appeal. The appellant gave evidence and adopted his witness statement as his evidence-in-chief. There was no cross-examination.
13. Mr Bramble relied on the Reasons for Refusal Letter dated 13 November 2014. Mr Ehtesham-Khan relied on the grounds in support of the application for permission and on the principles established in **Syed (curtailment of leave - notice) [2013] UKUT 00144 (IAC)**. The appellant had never received any notification of interview and the respondent was put to proof that the notice of invitation to interview had successfully been communicated to the appellant. The appellant completed his previous course of study with good grades and commenced his new course of study and paid his fees in full. Alternatively, Mr Ehtesham-Khan relied on the principle of fairness submitting that to refuse the appellant's application on the basis of his failure to attend an interview that he did not know of was unfair (**Naveed (student - fairness) [2012] UKUT 14 (IAC)** and **Thakur (PBS decision - common law fairness) Bangladesh [2011] UKUT 00151 (IAC)**).

14. There was no challenge that the appellant met the specific requirements of the Rules as to maintenance/funds and the CAS requirements. Whilst accepting that the respondent raised the issue of whether or not the appellant was a genuine student, there were no reasons provided in the refusal letter to indicate that there were any concerns that the appellant was a genuine student. Further there was no evidence before me to show that the appellant had been invited to attend for interview and that he had received the details thereof. Accordingly, I allowed the appeal on immigration grounds outright.

Notice of Decision

15. There is a material error of law in the determination which is set aside. I substitute a decision to allow the appeal on immigration grounds.

No anonymity order is made.

Signed

Date 26.2.2016

GA Black
Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal I make a fee award. The respondent is to make payment in full.

Signed

Date 26.2.2016

GA Black
Deputy Upper Tribunal Judge G A Black