



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/29062/2015

THE IMMIGRATION ACTS

Heard at Field House
On 2 November 2017

Decision & Reasons Promulgated
On 17 November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTE

Between

DEEPIKA DEEPIKA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr S Walker, Home Office Presenting Officer.

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of the First-tier Tribunal dismissing her appeal against the decision of 11 August 2015 refusing to vary her leave to remain and to remove her from the UK.

Background

2. The appellant is a citizen of India born on 25 October 1984. She first entered the UK on 26 February 2009 as a student with a visa valid until 31 January 2011. Her leave was extended to 10 May 2014 and she applied for further leave on 9 May 2014. She supported her application with a CAS letter from her college, Newcastle Academy of Business and

Technology, but before her application was decided on 30 July 2014 her college had lost its sponsor licence and therefore the CAS was not valid. For this reason her application was refused.

3. The appellant appealed against this decision and following a hearing on 18 December 2014 her appeal was allowed by the First-tier Tribunal with the consent of the respondent's representative to the limited extent that it was remitted back to the respondent on the basis that the decision was not in accordance the law. Subsequently, on 1 June 2015 the respondent sent the appellant a letter acknowledging that her appeal had been allowed and that her application was to be reconsidered. The letter said that before a decision was made and in line with the respondent's Rules and Guidance, consideration of the application would be suspended for a period of 60 calendar days during which time it was open to the appellant to withdraw her application and submit a fresh application in a different category or, if she wished to remain in the UK as a Tier 4 student, it was open to her to obtain a new CAS for a course of study at a fully licensed Tier 4 educational sponsor and vary the terms of her original application. She was also sent an Information Leaflet to show to any potential sponsor to confirm her position.

4. On 31 July 2015, the appellant wrote to the respondent acknowledging that she had been given 60 days to obtain a new CAS. She said that she had tried to find a new sponsor but almost all private sponsors had refused to issue a CAS and universities had also refused applications for admission. She had not been able to obtain a valid CAS as she did not have valid leave to remain in the UK, there was no proper progression of her studies due to the suspension of her private sponsor's licence and she had now lost trust in private colleges. She requested a grant of discretionary leave or a further three months to enable her to find a new sponsor.

5. On 11 August 2015, the respondent refused her application noting that the CAS from the previous college was not valid, the appellant had been informed of this and allowed 60 days to obtain a new sponsor and a valid CAS but she had not provided one within that period. The appellant appealed against this decision and asked for her appeal to be decided on the papers without a hearing.

The Decision of the First-tier Tribunal

6. In the decision of the First-tier Tribunal, the judge commented that the respondent had failed to provide an appeal bundle and the appellant had also not provided a bundle. In setting out her findings the judge said that the appellant did not dispute that she had failed to provide a valid CAS with her application and the respondent was therefore right to refuse the application as she did. She commented that, although article 8 was raised in the grounds of appeal, no evidence to substantiate the claim was submitted and she was not persuaded, referring to SS (Congo) [2015] EWCA 387, that it was appropriate for her to consider article 8 outside the Rules. The appeal was dismissed.

7. Permission to appeal was refused by the First-tier Tribunal but granted by the Upper Tribunal on the basis that it was arguable that the appellant did not have a fair hearing as the judge did not consider her supporting evidence and witness statement

which had been sent to the Tribunal on 15 June 2016 or the respondent's bundle which appeared to be on the case file.

Submissions

8. There has been no appearance by the appellant at this hearing. She has, however, written to the Tribunal indicating by letter dated 19 October 2017 that will not be attending and wishes the appeal to be determined on the papers. She confirms that she relies on her bundle of documents indexed 1-23 and asks for them to be considered in her absence.

9. Mr Walker accepted that there had been an error of law as there was a procedural irregularity in that neither the appellant's or the respondent's bundle had come to the attention of the judge. However, he submitted that even if the judge had seen all the documents, the appeal would inevitably have been dismissed.

Assessment of the issues

10. I have already summarised the background to this appeal. From this it is clear that the appellant, when she applied for further leave had a valid CAS from her college but before the first decision was made on 30 July 2014 her college had lost its sponsorship and her application was refused. She was successful in a subsequent appeal which found that the respondent had not acted in accordance with the law as she had not been given an opportunity of obtaining a place at another college before the decision was made. Following this decision, the appellant was issued with a letter giving her 60 calendar days to obtain a new CAS letter or to submit an application for leave to remain a different category.

11. The letter issued to the respondent on 1 June 2015 set out clearly the purpose of the 60-day period and indicates, equally clearly, that if a new, valid CAS is not submitted within that period along with the required supporting documentation, the application will be considered on the basis of the information available and will fall to be refused. On 31 July 2015, the appellant wrote to the respondent to explain why she had not been able to obtain a valid CAS and she asked for a grant of discretionary leave or a further 3 months to enable her to find a new sponsor. She said that she had not been able to obtain a valid CAS as she did not have leave. However, the purpose of the 60-day period was to give the appellant an opportunity of attempting to obtaining leave and she was also sent on Information Leaflet to show to potential sponsors to explain her position making it clear that a CAS could be issued if a college decided to sponsor her.

12. The respondent's final decision was made on 11 August 2015. By that time the appellant had not submitted a valid CAS. She could not comply with the requirements of the Rules for a grant of further leave as a Tier 4 student and the respondent was therefore entitled to refuse the application. In her letter of 31 July 2015, the appellant said that she had lost her trust in private colleges. There is no evidence whether she made applications but was unsuccessful during the 60-day period or whether she made no applications.

Whatever the position, the fact remains that, she did not have a CAS and could not meet the requirements of the Rules.

13. In this letter, the appellant had sought a period of 3 months discretionary leave but I am satisfied that the respondent was fully entitled to follow her policy of giving 60 days rather than 3 months to give the appellant the opportunity of finding another course at a different college. I am not satisfied that the respondent's decision gives rise to a breach of article 8. The appellant has been in the UK since February 2009 and studied until mid-2014. Whilst it may be arguable that she has established private life within article 8 (1), I am not satisfied from the evidence she relies on that the respondent's decision was in any way disproportionate to the legitimate aim of maintaining immigration control by the implementation of the Immigration Rules or that there has been any procedural unfairness to engage the principles set out in cases such as Naved (Students - fairness - notice of points) [2012] UKUT 14 and Kaur (Patel fairness: respondent's policy) [2013] UKUT 344, referred to in the appellant's grounds.

14. After the first appeal was allowed, the respondent followed the Rules and Guidance and the appellant then had a reasonable and ample opportunity to find a new place with a licensed sponsor but she failed to do so. Accordingly, the appeal is dismissed.

Decision

15. I am satisfied that the First-tier Tribunal erred in law. As the First-tier Tribunal did not have the evidence the parties sought to rely on, the proper course is for the decision to be set aside. I re-make the decision by dismissing appeal against the refusal of further leave to remain as a Tier 4 student.

Signed: H J E Latter
2017

Dated: 13 November

Deputy Upper Tribunal Judge Latter