



IAC-FH-CK-V1

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

Appeal Numbers: IA/00048/2015  
IA/00051/2015  
IA/00190/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 October 2015**

**Decision & Reasons Promulgated  
On 27 October 2015**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**MS HARDEEP KAUR  
MR MOHAR SINGH  
MISS MILANPREET SRAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr A Maqsood, Pride Solicitors

For the Respondent: Mr D Clarke, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are all citizens of India. I shall refer to Hardeep Kaur as the appellant. She and her husband Mohar Singh and their daughter Milanpreet Sran are dependent on her application.

2. The appellant made an application on 1 August 2014 to vary her leave as a Tier 4 (General) Student. This application was refused by the respondent in a decision of 14 November 2014. The reason for refusal is that according to the respondent the sponsor Zaskin College wrote to UKBA indicating that they have withdrawn the offer of sponsorship and are no longer willing to sponsor the appellant. The appellant appealed against the decision and her appeal was dismissed by Judge of the First-tier Tribunal Fox in a decision that was promulgated on 3 June 2015 following a hearing on 27 May 2015. The appellants were granted permission to appeal by Judge of the First-tier Tribunal R A Cox in a decision of 21 August 2015.
3. At the hearing before the First-tier the appellant was represented. The respondent was not. At the start of the hearing the appellant's representative Mr Malik made an application to adjourn the hearing on the basis that the appellant was unwell. This was supported by a letter from her doctor. The judge refused the application. The reason for this was that in his view the appeal rests on documentary evidence to demonstrate the existence of a valid CAS at the date of the application. He also stated that there was no evidence to demonstrate that the appellant would be able to attend any future hearing and that the appellant had been given adequate time to prepare a bundle. He went on to dismiss the appeal under the Rules and under Article 8. 4. There was a witness statement before the First-tier Tribunal which repeated what was asserted in the grounds of appeal, namely that the sponsor cancelled the appellant's sponsorship due to non-payment of the registration fee and that the application was refused because of the college's negligence.
4. The grounds before the First-tier Tribunal are poorly drafted but are essentially a witness statement from the appellant. There was also a separate witness statement from the appellant. It is clear from the grounds and the appellant's witness statement that fairness was an issue as was whether or not the respondent had properly applied a policy (although no policy was identified by the appellant). The grounds seeking leave to appeal challenge the substantive decision but also challenge the decision to refuse to adjourn the hearing.
5. At the hearing before me I heard oral submissions. Mr Maqsood had prepared a skeleton argument and relied on fairness and Mr Clarke conceded that the decision by the Secretary of State was discretionary and that there was no indication in the decision letter that discretion had been considered by the respondent. However, in his view this was not material because the appellant had conceded in her evidence that she was responsible for the withdrawal of the CAS because she had not paid a registration fee which led to the withdrawal of sponsorship. She would not therefore benefit from the policy referred to by Mr Clarke at the hearing.
6. The appellant through her representative argued that the appellant's evidence as indicated in her witness statement was that the decision of

the college to withdraw the CAS was erroneous. She did not accept that she had not paid a registration fee and in any event she was not told about the withdrawal of the CAS. She had discovered this on receipt of the Home Office's decision.

7. Mr Clarke submitted that if I accepted the appellant's argument and the decision is set aside, it would be appropriate to conclude that it is not in accordance with the law because the policy had not been applied.
8. Whilst it is true that the judge did not consider fairness, it is clear from the Reasons for Refusal Letter that in fact the respondent had not properly considered whether the policy applied to the appellant. There was no reason given by the respondent in relation to the decision of the sponsor to withdraw the licence and no reference to a policy. Contrary to Mr Clarke's submission, it was not clear that the appellant accepted that she had contributed towards the withdrawal of the CAS which would perhaps entitle a decision maker to conclude that she would not benefit from the policy (referred to by Mr Clarke) which would otherwise entitled her to 60 days in order to find another sponsor. It was not clear from the appellant's evidence exactly what her position is in relation to the revocation of the CAS. This was unsatisfactory particularly in the light of the fact that she was represented. There is also the issue of when the appellant was notified of the withdrawal. Her evidence is that this was when she received the respondent's decision. The judge did not make a finding on this issue or whether the appellant had contributed to the withdrawal of the sponsorship.
9. The judge did not adequately reason the decision to refuse to adjourn the case, in the light of the appellant's health condition, which was supported by her doctor. It is clear that the success of the appeal was not solely determined by whether or not the appellant had submitted with her application a valid CAS as decided by the judge. In fact it appears that the CAS was valid at the time she submitted her application but was subsequently revoked by the sponsor which would potentially give rise to issues relating to fairness. However, whether or not there are errors resulting from the failure to consider fairness and the adjournment decision, this is not material to my decision because I am satisfied that the decision not in accordance with the law and the judge materially erred in failing to consider this. I set aside the decision to dismiss the appeal and allow the appeal to the limited extent that the decision is still outstanding.

### **Notice of Decision**

The appeal is allowed to the limited extent that the decision of the respondent was not in accordance with the law. As such the application remains outstanding.

No anonymity direction is made.

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Date 26 October 2015

Signed Joanna McWilliam  
Upper Tribunal Judge McWilliam