



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)**

**APPEAL NUMBER:
IA/04708/2015**

THE IMMIGRATION ACTS

Heard at: Field House

**Decision and Reasons
Promulgated**

On: 2 February 2016

On: 26 February 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

**MR PANKAJKUMAR AMBALAL PATEL
NO ANONYMITY DIRECTION MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: In person

**For the Respondent: Mr S Walker, Senior Home Office Presenting
Officer**

DECISION AND REASONS

1. The appellant appeals with leave from the decision of the First-tier Tribunal, promulgated on 17 June 2015, dismissing his appeal against the decision of the respondent made on 17 February 2014 refusing his application to remain in the UK as a Tier 4 (General) Student Migrant.
2. The appellant's application was made in February 2014 but was refused almost a year later on 23 January 2015. The basis of the refusal was that

the CAS that had been awarded to the appellant had subsequently been withdrawn.

3. There was in fact evidence from Zaskin College which was referred to by the First-tier Tribunal Judge at [15], as to why the CAS had been withdrawn: it had been withdrawn because the respondent had not made a decision before the start date of the course dated 9 July 2014.
4. In granting permission to appeal, Upper Tribunal Judge Plimmer found that the Judge had arguably failed to address that evidence. In particular she stated that having quoted from the letter from the college which provided the reason for the withdrawal of the CAS, "it is difficult to understand why the Judge indicated that the letter from the college did not state why the CAS was withdrawn [16]".
5. At the commencement of the hearing, Mr Walker referred to the respondent's Rule 24 response. There it is stated that the respondent had not seen the letter dated 26 February 2015 from Zaskin College. The response also stated that if the withdrawal of the CAS was due to delay on the part of the respondent, this could "possibly raise issues of unfairness".
6. The original of the letter from Zaskin College was made available to Mr Walker. The letter was in the bundle and the letter was produced to the First-tier Tribunal Judge who referred to it at [15].
7. Having read the letter, Mr Walker stated that in the circumstances there had been unfairness arising from the delay in making the decision. He accepted that the appellant should have been given a period of time in which to apply for "a new sponsor". He stated that the appellant should be granted 28 days to apply "with a new sponsor".
8. Mr Patel accepted the outcome as proposed by Mr Walker.
9. I am satisfied that the concession made by Mr Walker was correct. I have had regard to the decision of the Tribunal in Thakur (PBS decision - common law fairness) Bangladesh [2011] UKUT 00151 where the Tribunal held that a decision by the secretary of state to refuse further leave to remain as a Tier 4 student was not in accordance with the law because of a failure to comply with a common law duty to act fairly in the decision making process where an applicant had not had an adequate opportunity of enrolling at another college following the withdrawal of his sponsor's licence or of making further representations before the decision is made.
10. In this case the respondent took an inordinately long time to consider the application which had been submitted on 17 February 2014. The decision had not been made by 9 July 2014, which was the start date of the course. That was the reason given by the college as to why his CAS had been withdrawn.
11. It is moreover clear that the appellant was not a party to the withdrawal of his CAS. It was accordingly unfair to refuse his application without

affording him an opportunity to vary his application by identifying a new sponsor before the application is determined.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside.

It is directed that the respondent make a fresh decision, which is not to be made for a period of 28 days from the date of the Tribunal's decision being transmitted to the parties, in order to give the appellant a reasonable opportunity to vary his application.

No anonymity direction is made.

Signed
Deputy Upper Tribunal Judge Mailer

Date 23 February 2016