



IAC-FH-CK-V1

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

Appeal Numbers: IA/06906/2015  
IA/07181/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 23 December 2015**

**Decision & Reasons Promulgated  
On 15 January 2016**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**MR PANKAJKUMAR ANILKUMAR JOSHI  
MRS DEVALBEN PANKAJKUMAR JOSHI  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr A Burrett, Counsel instructed by Sangat Advice Centre  
For the Respondent: Ms A Brocklesby-Weller, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are citizens of India. Mr Joshi made an application on 4 February 2015 to vary his leave as a Tier 4 (General) Student Migrant under the points-based system and Mrs Joshi, his wife, made an application to be his dependant. The applications were made on 21 June 2014 and refused by the Secretary of State on 4 February 2015.

2. The reason for the refusal was that the Confirmation of Acceptance for Studies (CAS) which was submitted with the application was not valid as the Tier 4 Sponsor Register as of 30 January 2015 indicated that the college was not listed as a Tier 4 sponsor as of that date.
3. The appellants appealed and their appeals were dismissed by Judge of the First-tier Tribunal Fox in a decision that was promulgated on 1 June 2015 following determination on the papers at the request of the appellants. The judge dismissed the appeals under the Rules and it is necessary to quote the following paragraphs from the judge's decision:
  - “12. Within the Appellant's bundle is a letter dated 16 March 2015, which contains information relevant to this Appeal. The Appellant contends that he submitted his application on 21 June 2014. His application included a CAS from Essex College Ltd. At that stage it is reasonable to presume that the CAS was valid. What we know from the letter of 16 March from one of the Respondent's officers, is that by 24 June 2014 Essex College Ltd had its licence revoked. What I am unaware of is, the actual date that that licence was revoked. In the absence of any information to assist me I must presume that it was revoked on after 24 June 2014. When the Appellant made his application he did so with a valid CAS.
  13. There is an onus on the Respondent to notify the Appellant that Essex College Ltd had its licence revoked and that he has a further period of time (60 days) to present another certificate. The Appellant contends that he did not receive notification to this effect from the Respondent. The Appellant contends in paragraph 6 of his statement that he found out that he was aware of the position regarding his CAS on 23 June 2014, namely that Essex College Ltd had its sponsorship licence revoked. This suggests two things. Firstly, that the licence must have been revoked prior to 24 June 2014. Secondly that the Appellant was fully aware of his position that his application could no longer be considered valid and he should do something about it.
  14. The suggestions are important because the onus rests with the Appellant in the first instance to ensure that he has valid CAS to submit when he makes his application. On his own evidence this was not the case.
  15. The fact that he was aware of a problem involving the college should have motivated him, in some direction or another, whether the Respondent came back to him or not. So, between 23 June 2014 and 4 February 2015 when the Appellant received formal notice from the Respondent that his application was refused (including the reasons for the refusal), the Appellant did nothing to secure his position by seeking out a further College and course.”
4. The appellants were granted permission by Upper Tribunal Judge Canavan in a decision of 30 September 2015. At the hearing before me Ms Brocklesby-Weller on behalf of the Secretary of State conceded that the judge had made an error of law because he failed to identify the date of revocation of the sponsor's licence. If the revocation had taken place post the date of the application then it was incumbent on the Secretary of State to apply the relevant policy which would give the appellant 60 days in

order to allow him to regularise his stay. The appellant's leave expired on 28 June 2014.

5. The judge made a material error of law for the reasons identified by the appellants and this was conceded by the Secretary of State. It is clear to me that the judge's findings on this are ambiguous. However, he was not assisted by either party, who were unable to confirm the date of the revocation and even before me there was not information about this from the parties.
6. I accept Ms Brocklesby-Weller's submission that the decision of the Secretary of State was not in accordance with the law because there is no consideration of whether or not the policy applies and indeed no consideration or identification of the date of revocation of the sponsor's licence. The failure to resolve this issue amounts to an error of law and I set aside the decision. I communicated this to the parties at the hearing before me.
7. In the circumstances the application remains outstanding.

### **Notice of Decision**

The appeal is allowed.

No anonymity direction is made.

Signed Joanna McWilliam

Date 14 January 2016

Upper Tribunal Judge McWilliam