



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

Appeal Number: IA/05882/2014

THE IMMIGRATION ACTS

Heard at Field House

On 27 June 2014

**Determination
Promulgated
On 2 July 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MISS MASHUDA AKTAR
(NO ANONYMITY ORDER MADE)**

Respondent/Claimant

Representation:

For the Appellant: Mr L.Tarlow, Specialist Appeals Team

For the Respondent/Claimant: In person

DETERMINATION AND REASONS

1. The SSHD appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Borsada sitting on 27 March 2014) allowing the claimant's appeal on the papers against the decision by the respondent to refuse to

vary her leave to remain in the United Kingdom as a Tier 4 Student Migrant. Permission to appeal on error of law grounds was granted by Judge Cruthers on 12 May 2014. The First-tier Tribunal did not make an anonymity order, and I do not consider that such an order is required for these proceedings in the Upper Tribunal.

2. The application made on 1 June 2013 was refused on 20 January 2014. The ground of refusal was that the claimant had claimed 30 points under Appendix A for a valid CAS. The Tier 4 Sponsor register had been checked on 20 January 2014, and Mancunia College was not listed as of this date. As she had not provided a valid CAS, the SSHD was not able to assess whether she met the requirements for maintenance, and thus whether she was entitled to the award of points under Appendix C.

The Decision of the First-tier Tribunal

3. The evidence before Judge Borsada was that the claimant had received notification at the end of October 2013 from the Home Office of the revocation of the licence of Mancunia College, and she had varied her application for leave to remain in consequence of this notification by obtaining a new CAS from a different sponsor, which she had submitted to the Home Office within 60 days.
4. Judge Borsada found that the SSHD had given the claimant 60 days to obtain a new CAS by letter dated 29 October 2013, and that the claimant had provided "that information" within the allotted time. He could find no valid reason why the application was rejected, and allowed the appeal.

Reasons for Finding an Error Of Law

5. There is no error of law challenge by the SSHD to the implicit finding by the judge that the decision was not in accordance with the law because the claimant had provided evidence that she had obtained a new CAS in December 2013. Accordingly, as Mr Tarlow accepts, the SSHD ought to have taken into account the new CAS when making a decision on the claimant's application, and the SSHD was wrong to treat the claimant as continuing to rely on an old CAS issued by Mancunia College.
6. The judge's error lies solely in him allowing the appeal outright instead of allowing it on the ground that the decision was not in accordance with the law, and remitting the application for further consideration by the SSHD in the light of the new CAS. The SSHD had hitherto made no assessment as to whether the claimant had provided the specified evidence to show that she met the maintenance requirement in Appendix C., and it was not open to the judge to usurp the role of the primary decision-maker on this issue. Furthermore, he did not purport to do so. No finding is made on the topic of maintenance. Thus the only possible outcome, following the finding that the claimant had provided a valid CAS within the 60 day period afforded to her by the SSHD, was that the decision was not in accordance with the law.

Decision

The decision of the First-tier Tribunal allowing outright the claimant's appeal against the refusal of leave to remain contained an error of law, and accordingly the decision is set aside and the following decision is substituted: the claimant's appeal is allowed on the ground that the decision appealed against is not in accordance with the law, and a lawful decision on the claimant's varied application for leave to remain (relying on a new CAS) is awaited. The claimant's application for leave to remain as a Tier 4 student migrant is remitted to the SSHD for further consideration.

Anonymity

The First-tier Tribunal made no anonymity order.

Signed

Date

Deputy Upper Tribunal Judge Monson