Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/31096/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6 May 2015	**On 11 June 2015**

Before

THE HON. MRS JUSTICE MCGOWAN
(Sitting as judge of the Upper Tribunal)
UPPER TRIBUNAL JUDGE PERKINS

Between

ROZER
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M M Rahman, Legal Representative, Simon Noble Solicitors
For the Respondent: Miss A Brocklesby-Weller, Home Office Presenting Officer

DECISION AND REASONS

1. We see no need for, and do not make, an order restricting the publication of details about this case.

2. The appellant appealed a decision of the respondent on 16 July 2014 to refuse him leave to remain as a Tier 4 (General) Student Migrant. The application was refused because the appellant did not have a Confirmation of Acceptance for Studies, commonly referred to as a CAS. It had been withdrawn. He appealed to the First-tier Tribunal apparently in the genuine belief that he was entitled by reason of some imprecisely

identified policy to a period of 60 days' grace in which to sort out his circumstances and make a new application.

3. When the appeal came before First-tier Tribunal Judge Hussain sitting at Richmond he found, correctly, that the strict requirements of the Rule were not met. He found that there was no valid form of CAS because it had been withdrawn by the college the appellant wanted to attend. The First-tier Tribunal Judge was clearly minded to dismiss the appeal but was concerned at the strongly advanced, but not particularly clearly explained, argument that there was a relevant policy, and he gave directions that the appellant produce a copy of the policy by sending it by facsimile to the First-tier Tribunal.

4. Something was sent in response to directions but it was not a policy document and the First-tier Tribunal, wholly consistently with the directions given, went on to determine the appeal. Contrary to the suggestion in the grounds of appeal to the Upper Tribunal, the First-tier Tribunal did not dismiss the appeal because directions had not been followed or because the policy document had not been sent but because the appellant did not comply with the Rules. He had not got a form CAS.

5. The appellant was not satisfied served grounds of appeal which persuaded a First-tier Tribunal Judge that there might have been some unfairness.

6. We make clear that we are not aware of any Court of Appeal authority confirming that there no general duty on the Secretary of State to help people who do not fill in their forms properly or do not support an application with the required documents. We are however quite satisfied that it is wrong to suggest that there is any such duty. It is the appellant's duty to comply with the Rules. This was confirmed in the case of **EK (Ivory Coast) v Secretary of State for the Home Department [2014] EWCA Civ 1517**. For example at paragraph 33 Sales LJ said:

> "I do not consider that an approach by the Secretary of State which involves a simple check whether an applicant has in place a valid CAS letter at the time the decision is made on their application, rather than seeking to inquire further into the background if it appears that a CAS letter has been withdrawn, involves any unfairness to an applicant for which the Secretary of State bears responsibility. The PBS places the onus of ensuring that an application is supported by evidence to meet the relevant test for grant of leave to enter or remain upon the applicant, and the Immigration Rules give applicants fair notice of this. The essence of the CAS element within the PBS is that the Secretary of State relies on a check on certification by approved colleges, and does not have to investigate further. It is inherent in the scheme that an applicant takes the risk of administrative error on the part of a college."

7. In response to Judge Hussain's directions the appellant's representatives sent a "refusal" and a "determination" in the case of another of their clients, a Mr Rahman, who appeared to be in similar circumstances to the present appellant and who appeared to have got the relief that he wanted. Certainly that was the judge's finding in the case relied upon and that decision has not been appealed. We have to say it does not seem to us that that decision was right in law. Rather we think that the judge just

made a mistake but, as was explained to us by Miss Brocklesby-Weller, the Secretary of State had no need to take matters further because there was a change of circumstances in that case which meant that the Secretary of State decided it was right to extend leave anyway. The decision to extend leave was not an endorsement of the decision of the First-tier Tribunal. It may simply be fortuitous but whatever the explanation the decision of the First-tier Tribunal did not bind the First-tier Tribunal Judge in this case and most emphatically does not bind us.

8. We do know that there is a policy that might be thought relevant. Indeed a copy of the policy was produced today. It is a policy that applies in certain circumstances that do not exist here. The key to it is that it is a policy that applies when a college has had its status withdrawn by the Secretary of State. In those circumstances, subject to many qualifications that need to be looked at in the particular circumstances, the Secretary of State will give an applicant 60 days leave in which to make a fresh application. That is not a policy that applies to the circumstances here which is the circumstances of the college withdrawing the CAS.

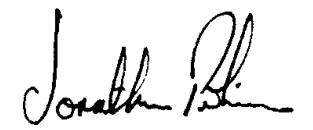
9. If what we have been told is right, the appellant may have a justified sense of grievance towards the college and may feels that his CAS was withdrawn unfairly, as a way of putting pressure on him in a financial dispute. We are in no position to make any findings about that beyond saying that if it is right we can understand his irritation. As was explained by the Court of Appeal in the case of **EK**, in those circumstances his remedy lies in an action in contract against the college.

10. It is quite clear to us that this is an appeal that ought to have been dismissed for the very reason it was dismissed. It is that the appellant did not have a CAS that the Rules required him to have. The only reason it has taken the course that it has is that the First-tier Tribunal Judge was tumbling over backwards to be fair and that led to further difficulties. If the First-tier Tribunal Judge really though it right to permit documents to be served after the hearing he really should have given directions that the documents be served on both parties and to have gives both parties and opportunity for written submissions. If that had been done it should have been plain that there was nothing in the appellant's point.

11. We understand that from the appellant's point of view this is a frustrating decision. If his explanation to us is right then he has done nothing wrong. Rather he has been let down by the college. Be that as it may, there is no relevant policy here. The First-tier Tribunal Judge did not think there was a relevant policy but he gave the appellant an opportunity to produce the relevant policy and none was produced. The First-tier Tribunal Judge dismissed the appeal. We find he was right to do that and we find there was a no error of law on his part and we dismiss the appeal that is in front of us.

Notice of Decision

This appeal is dismissed.



Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 4 June 2015