Student No - 150319146

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| CASE NAME AND CITATION |

EK (Ivory Coast) v The Sectary of State for the Home Department [2014] EWCA Civ 1517

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| COURT AND JUDGES |

Court of appeal (Civil Division): Briggs LJ, Floyd LJ and Sales LJ

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| PARTIES |

Appellant: EK (Ivory Coast). Respondent: The Secretary of State for the Home Department.

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| MATERIAL FACTS |

The Appellant made an application for leave to remain in the United Kingdom as a tier 4(General) student migrant, with supported by CAS letter from St. Stephen’s college, which was authorised by the secretary of the state for the home department to issue CAS letter.

However at that time when the secretary of states, decision on the application, St Stephen’s withdrew the CAS letter due to some administrative error. That is to say, by the time of states decision, there wasn’t a valid CAS to be granted relevant point under the PBS to leave to remain therefore application was refused.

Appellant was unaware that St Stephen’s had withdrawn her CAS letter.

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| QUESTION OF LAW/ISSUES |

The issue was whether, under the general public law duty of fairness, the secretary of state should have given a notice of the withdrawal of the CAS letter and postponed making any decision in order to give an opportunity to rectify any errors by school. (26)

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| DECISION |

Appeal dismissed by 2:1 majority (Sales LJ and Briggs LJ)

(Floyd LJ dissenting)

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| DETAILED REASONS FOR THE DECISION |

The position in which Appellant had been placed could be said to be unfair to her. However, the secretary of state had not breached her public law duty to act fairly in considering Appellant’s application for leave to remain. (25)

This unfairness, which the Appellant suffered, was due to the St Stephen’s actions and omissions, and the secretary of the state was not responsible for it. The general public law duty to act fairly had not imposed an obligation on the secretary of state, when she saw that the CAS letter had been withdrawn, to postpone any decision to give appellant notice of the problem and an opportunity to rectify it.

Sales LJ stated, the duty to act fairly varies according to the particular decision-making context and referred classic statement made by Load Mustill in, *R v Secretary of state for the home department ex P Doody, [1994] 1 AC 531*. And also *Lloyd v McMahon [1987] A.C. 625* applied.

The procedure to apply for leave to remain or enter in the UK in certain classes of case was simplified by PBS system. This was done to process high volumes of application in a fair and reasonable expeditious manner, according to clear objective criteria. (28)

It was an inherent feature of that system that it put a premium on predictability, at the expense of discretion, *Alam v Secretary of State for the Home Department [2012] EWCA Civ 960, [2012] Imm. A.R. 974* applied.

In that context, public benefits should not be seriously imperiled by the duty of fairness by having a clear and predictable scheme, which operates accordingly with objective criteria. Acceptance of appellant’s submission would sabotage the benefits associated with PBS in a significant and inappropriate way.

It would be a breakthrough upon the straightforward and relatively automatic system of decision making by the secretary of state to make inquiries whenever the CAS letter is withdrawn.

The secretary of the state relied on a check for the certification provided by the approved colleges and did not have to investigate further; this was the essence of CAS element within the automatic system. (33)

It would not be fair to expect the secretary of state to have to distort the regular operation of the points-based system regime to protect an applicant against the speculative possibility that a college had made an administrative error in withdrawing a CAS letter, rather than withdrawing it for reasons which did indicate that no leave to enter or remain ought to be granted.

The instant situation contrasted with that in *Doody* where the liberty of the subject was at stake. The interests at stake for applicants under the points-based system regime were of far less weight, *Doody* distinguished. (36)

Drawing analogies with the operation of the duty of fairness is not considered appropriate. This is in such cases where the impositions of penalty are in issues similar to a criminal or professional context. In these cases, matters such as liberty, livelihood and good name were at stake and fairness requires notices, and an opportunity to address them before an adverse decision was derived. (37)

In accordance with a simple and mechanistic points system, an application for leave to enter or remain required the grant of something to which an applicant had no prior right or expectation.

The points-based system authorities where the general public law duty of fairness was found to carry out additional obligations on the Secretary of State were materially different from the present case.

It has been held that secretary of state has withdrawn authorization from a college to issue a CAS letters; it should be fairness to give a reasonable opportunity to find a suitable college before remove it. : *Patel (revocation of sponsor license - fairness) India [2011] UKUT 00211(IAC);* *Thakur (PBC Decision – Common Law Fairness) Bangladesh [2011] UKUT 00151 (IAC);* the requirement arose from the decision of the secretary of the states and student should be given the chance to protect themselves but it contrast to the present case, the secretary was unaware of the reason for withdrawing the CAS. (38)

Some of these situations included the change of position, which had been brought about by the secretary of state. In *Naved (Student: Fairness: Notice of points), Re [2012] UKUT 14 (IAC)*, the Home Office bore substantial responsibility for the error, which had occurred. The secretary of states refused to leave on the ground that the applicant had no “established present” as a student in the United Kingdom.

They comprise of:

- Not being asked to produce documentary evidence for LCR

- The home office verified with LCR and LCR provided wrong information where a student name is similar to the *Naved*.

That case did not lay down a general principle that fairness required the secretary of state to give an applicant an opportunity to address grounds for refusal of which she could not have known, *Naved* explained.

Floyd LJ dissenting and reached a different conclusion to that Sales LJ. In *Thakur* as sales LJ explained, the secretary had initiated the action by withdrawing of the CAS license. In *Naven*, the secretary relied on the wrong information, which is not related to the applicant.

Both the cases showcase the unfairness that the applicant was not given a chance to rectify or deal with a change in circumstance. The principle must be that where the secretary was aware of the material changes of circumstance since the application was filed and which would be the reason for refusal.

The appellant must be given a chance to deal the new circumstance unless it is proved that the applicant was aware of the change or circumstance or it was the fault of the applicant with the change of circumstance. The ‘withdrawal’ of the CAS was clearly a change of circumstance since the applicant was filled. (49-50)

Briggs LJ agreed with Sales LJ and dismissed the appeal and highlighted two pointes, which explained by Sales LJ. The predictable variety of actual situation in which duty may arise in such as to make it dangerous to seek to identify any more rigid principle as applicable to any particular situation. (58)

Likely the Sales LJ fairness principle, which leads to the success for the applicant, would destroy the simplicity, predictability and relative speed of the PBS process. (59)

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| RATIO DECIDENDI |

The Secretary of state did not have any idea why the CAS letter was withdrawn and was not responsible for the withdrawal and to maintain fair dealing with the public interest in the due operation of the PBS regime, and the individual interest of the Appellant was in favor of simple operation of the regime without changes. (38)

The Secretary of the Home Department had no obligation to give notice to an appellant about the CAS deficiency. The secretary’s responsibility only involves verifying that the appellant had a valid CAS letter upon making the decision. It was not the duty of the secretary to investigate any further. (33)

The appellant had complete knowledge of her CAS application status and conformation before the appeal hearing. (34)