Upper Tribunal
(Immigration and Asylum Chamber)

R (on the application of Akudike) v Secretary of State for the Home Department IJR [2015] UKUT 00213 (IAC)

Heard at Cardiff Civil Justice Centre

On 26 February 2015

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IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

R (ON THE APPLICATION OF SAMUEL OKEBARAM AKUDIKE)

Applicant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Applicant: Unrepresented

For the Respondent: Mr C Jowett instructed by the Treasury Solicitor

JUDGMENT

Judge Grubb:

1.
The applicant claims that the Secretary of State acted unlawfully by failing to grant him leave as a Tier 4 (General) Student Migrant under para 245ZX of the Immigration Rules (Statement of Changes in Immigration Rules , HC 395 as amended) following a decision of the First-tier Tribunal notified on 16 July 2013 allowing the applicant's appeal against the respondent's decision of 22 February 2013 to refuse him leave as a Tier 4 Student.

The Background

2.

The applicant is a citizen of Nigeria who was born on 20 June 1972. On 18 October 2010, the applicant applied for leave to enter as a Tier 4 (General) Student in order to undertake study at the University of Wales. With that application he submitted a Confirmation of Acceptance of Studies ("CAS"). On 27 October 2010, the applicant was granted leave to enter until 15 July 2012. The applicant then undertook study in the UK.

3.
On 13 July 2012, the applicant applied for further leave to remain as a Tier 4 Student in order to undertake an MSc Accounting Course at the University of Glamorgan (now the University of South Wales). With that application he submitted the same CAS as he had submitted with his previous successful application for entry clearance and leave to enter. That CAS expired on 15 July 2012 and, in any event, could not under the Rules be used a second time. On 28 November 2012, the respondent wrote to the applicant's (then) solicitors, Albany Solicitors, requesting that the applicant should submit his "most recent CAS number which has been used for his current course of study". In response to that letter, Albany Solicitors wrote to the respondent on 4 December 2012 stating that:

"Our client confirms that the CAS number for our client's current course of study is from University of Wales, Newport and the original CAS document was submitted with the original application. However, a copy is provided with this correspondence. The CAS number is: **E4G2KE5A04N0U1** . We note that the CAS document sets an expected end date of his course as the 15 th May 2012. However, our client confirms that his course is still ongoing due to the complaint against the university, evidence of which is enclosed with this letter."

4.
On 23 February 2013 the respondent refused the applicant's application for further leave as a Tier 4 Student on the basis that the CAS had been "used" in his previous application made on 18 October 2010 and was, as such, no longer valid. Consequently, the applicant was not awarded the required points under Appendix A of the Rules.

5.
The applicant appealed to the First-tier Tribunal. His appeal was heard by Judge Archer on 2 July 2013. Judge Archer allowed the applicant's appeal on the basis that the decision was not in accordance with the law. Judge Archer appears to have accepted that the CAS submitted by the applicant was not valid but found that it was unfair and not in accordance with the respondent's "evidential flexibility" policy not to have given the applicant an opportunity to rectify the deficiency in his application by submitting a valid CAS. At para 22 of his determination, Judge Archer set out his conclusion as follows:

"I have concluded that the principles of fairness require in this case that the respondent should make a fresh decision. No valid decision has yet been made in the applicant's case as a result of the failure to make reasonable enquiries with the applicant. The decision as a whole is therefore not in accordance with the law."

6.
Thereafter, matters appear to go quiet in relation to the application. The respondent did not challenge Judge Archer's decision. However, on 29 August 2013, the applicant was arrested and charged with an offence contrary to s.25 of the Immigration Act 1971, namely facilitating and arranging a marriage in order to facilitate the commission of a breach of immigration law. On 26 May 2014, the applicant was acquitted of that offence at the Cardiff Crown Court when the prosecution offered no evidence.

7.
On 22 May 2014, the respondent wrote to the applicant's solicitors seeking to give effect to Judge Archer's decision in the following terms:

"Before we make a final decision on your client's application, and in line with our Rules, we will allow your client a period of 60 calendar days to find a new Tier 4 sponsor so that they may vary their initial Tier 4 application. This 60 day period will end on 21 July 2014. We will not allow further extensions beyond the 60 calendar day period. We will make a decision on your client's application at the end of the 60 day period."

8.
The effect of Judge Archer's decision was, as he explicitly said, that the applicant's original in time application of 13 June 2012 remained undecided and, as a result of s.3C of the Immigration Act 1971, the applicant continued to have leave as a student in the UK. The respondent's letter of 22 May 2014 deferred consideration of the applicant's application for a further 60 days in order that he could, if he wished, find a new sponsor and submit a new and valid CAS. With that letter, the respondent included a certified copy of the applicant's passport, his Tier 4 application form, a sponsor information leaflet and a page required for enrolling biometrics.

9.
On 27 May 2014, the applicant's solicitors wrote to the applicant at his home address as follows:

"We write further to our previous correspondence. Please find enclosed a letter that we received from the Home Office today, along with the following documents:

1 Information leaflet from the Home Office

2 Certified copy of your passport

3 Tier 4 application

Please note that the Home Office is providing you 60 days to find a new Tier 4 sponsor. This period will end on 21 July 2014. Thereafter, a decision will made (sic) be made on your application.

As you are aware, we do not have an active and open file for you at present. If you would like our office to assist you with the preparation and completion of your Tier 4 application, I confirm that a fee of [] plus VAT would be payable."

10.
On 30 May 2014, the applicant wrote to the Home Office in relation to his "pending visa extension" stating that:

"However, I would appreciate if you could kindly expedite action to grant and issue my visa without further delay and return my original credentials with you to enable me start life again, particularly as admission for new session is on now".

11.
The applicant was clearly, as this letter demonstrates, under the (erroneous) impression that the effect of Judge Archer's decision to allow his appeal was that the respondent was required to grant him leave. Indeed, on that same day the applicant wrote to the First-tier Tribunal expressing concern that he had only been provided with "60 days to find a new sponsor". On 6 June 2014, the First-tier

Tribunal responded to the applicant's letter indicating that: "The Tribunal has no power enforcement once an appeal has been concluded".

12.
It would appear that, thereafter, the applicant did not further instruct Albany Solicitors. He told me at the hearing that he was unable to pay the requested fee.

13.
The applicant did, however, contact a number of universities concerning further study. The email exchanges are set out at pages 36-46 of the applicant's bundle. The correspondence with Swansea University (pages 36-38), Cardiff University (page 39), the University of South Wales (pages 40-42), Bath University (page 43), Lancaster University (page 44) and Manchester University (pages 44-46). I will return to the content of this exchange later. For the present, it suffices to note that the applicant is variously advised to provide further documents and, in the case of the University of South Wales, is advised to obtain a visa before making a new application to it.

14.
At some point, the applicant instructed new solicitors, Duncan Lewis Solicitors. On 14 July 2014, they wrote to the respondent enclosing the email correspondence from Cardiff University, Lancaster University, Swansea University and the University of South Wales. The letter continued:

"As can be seen from the enclosed emails from universities our client has been unable to obtain a new CAS as the universities require evidence that he currently holds Leave to Remain in the United Kingdom. Whilst we note that our client's leave is statutorily extended under Section 3C of the Immigration Act 1971 the only evidence that our client has of his status in the UK is a copy of his visa that states it has expired. In light of the above it is of little surprise that the universities that our client approached to be unable (sic) to offer our client a new CAS. It is further noted that our the (sic) letter dated 22 May 2014 states that our client's former sponsor has had their licence revoked. It is noted that our client's previous sponsor was the University of South Wales who currently holds a valid Tier 4 Sponsorship Licence.

In the light of the above we request that our client is granted a short period of Leave to Remain on a discretionary basis to allow him to obtain a valid Confirmation of Acceptance of Studies and then to submit a new application for a Tier 4 General Visa. We suggest a period six months would be sufficient.

We confirm that our client will continue to attempt to attempt to apply for a valid CAS whilst this application is outstanding and we will forward any responses to you in due course."

15.
The 60 day period deferring a decision by the respondent ended on 21 July 2014. However, the respondent did not proceed to make a decision as she had indicated she would in her letter of 22 May 2014.

16.
On 4 August 2014, the applicant wrote to the Home Office again requesting that he should be granted a visa in order that he could seek admission for the coming academic year.

17.
No response was received by 18 August 2014 and, on that date, the applicant filed the present claim challenging the respondent's failure to implement Judge Archer's decision.

18.
On 18 August 2014, the same day as the claim was filed, the respondent, apparently in response to the letter from Duncan Lewis of 14 July 2014, granted the applicant 60 days' discretionary leave outside the Immigration Rules on an exceptional basis. The respondent's letter states as follows:

"Following your allowed appeal you have been granted leave to remain outside the Immigration Rules. You have been granted leave to remain for a period of 60 days until 17 October 2014 to enable you to find a new Tier 4 sponsor and submit an application. You will be allowed to switch into the Tier 4 category on an exceptional basis within this period of leave. If you do not make an application by the end of this period you are expected to leave the United Kingdom."

19.
That letter was sent to the applicant's solicitors, Duncan Lewis, at their Harrow address. Thereafter, the applicant attended his solicitors on 2 September 2014 when he collected the documents enclosed with the respondent's letter (see pages 11-12 of the applicant's second bundle).

20.
Thereafter, the applicant contacted a number of universities again. The email exchanges are at pages 14a-21b of the applicant's second bundle with Lancaster University (pages 14a-14b), Swansea University (pages 15-16), Cardiff University (page 17), Bath University (pages 18-19), Manchester University (page 20) and the University of South Wales (pages 21a-21b). Again, I will return to the content of these emails shortly. Suffice to say for present, the emails reflect variously a need for the applicant to make a formal application, that time for applying for the 2014-2015 academic year has passed and that his 60 day visa was not sufficient to allow his admission.

21.
On 29 September 2014, the applicant wrote to the respondent pointing out, inter alia , that he was unable to obtain admission on the basis of his 60 day visa. The respondent replied to that letter on 3 October 2014 pointing out that in her letter of 22 May 2014 the necessary steps for obtaining a new CAS were set out including that a "CAS must be obtained before submitting an application for leave to remain as a Tier 4 (General) Student Migrant".

22.
The letter went on to point out that the applicant did not appear to have made an application for admission to any of the universities. On 9 October 2014 and on 10 October 2014, the applicant replied to the respondent's letter stating, in effect, that the universities would not admit him on the basis of his 60 day visa.

23.
On 17 October 2014, the applicant's 60 day grant of leave expired.

24.
On 21 October 2014, HHJ Vosper QC, sitting as a judge of the Upper Tribunal granted the applicant permission to bring these proceedings.

The Relevant Rules

25.
The requirements for the grant of leave to remain as a Tier 4 (General) Student are set out in para 245ZX which provides, inter alia , at para 245ZX(c):

“The applicant must have a minimum of 30 points under paragraphs 113 to 120 of Appendix A.”

26.
Paragraph 114 of Appendix A provides that “30” points shall be awarded for a “Confirmation of Acceptance for Studies”. Paragraph 115A provides that:

“In order to obtain points for a Confirmation of Acceptance for Studies, the applicant must provide a valid Confirmation of Acceptance for Studies reference number.”

27.
Paragraph 116, so far as relevant, provides that:

“A Confirmation of Acceptance for Studies will only be considered to be valid if:

…. (ea) The migrant must not previously have applied for entry clearance, leave to enter or leave to remain using the same Confirmation of Acceptance for Studies reference number where that application was either approved or refused (not rejected as an invalid application declared void or withdrawn) …”

Discussion

Some Preliminary Points

28.
I begin with a few preliminary issues before turning to the substance of the parties’ submissions.

29.
First, it is clear that the CAS (or more accurately its reference number) submitted with the applicant’s application for leave on 13 July 2012 was not valid. It had previously been submitted with his application made on 18 October 2010, as a result of which he was granted leave to enter on 27 October 2010 until 15 July 2012. The effect of para 116(ea) of Appendix A is that the applicant could not further rely upon that CAS reference number. As a result, in his most recent application he did not have the minimum 30 points required under paragraphs 113 to 120 of Appendix A. The respondent’s refusal to grant him leave under para 245ZX on 22 February 2013 was, therefore, in accordance with the Immigration Rules.

30.
Secondly, Judge Archer’s decision to allow the applicant’s appeal on the basis that it was unfair not to give the applicant an opportunity to submit a CAS was, on one view, somewhat generous. The respondent had, in fact, done just that in her letter of 28 November 2012 (see para 3 above). Further, the case law plainly recognises that, as a matter of fairness, the Secretary of State is not required to give an applicant notice that she considers that there is a deficiency in a CAS before making an adverse decision on that basis (see, Kaur v SSHD [2015] EWCA Civ 13). Whilst Kaur postdated Judge Archer’s decision, the earlier authority to which it refers was not, unfortunately, drawn to Judge Archer’s attention.

31.
In any event, Judge Archer’s decision stands having not been challenged by the respondent. Indeed, as I have already pointed out, the respondent sought to give effect to Judge Archer’s decision in her letter of 22 May 2014 by deferring her decision on the applicant’s outstanding application for 60 days in order to give him an opportunity to submit a valid CAS prior to a decision being taken.

32.
Indeed, even though the applicant did not submit a new CAS, the respondent again sought to give effect to Judge Archer's decision (in response to the letter of 14 July 2014 from the applicant's solicitors) by granting him a further period of 60 days leave on 18 August 2014 valid until 17 October 2014.

33.
In regard to this grant of leave, Mr Jowett, who represented the respondent, acknowledged that, in fact, the applicant has at all relevant times, including to the present day, had leave under s.3C of the Immigration Act 1971. That is undoubtedly correct as his application made on 13 July 2012, as a result of Judge Archer's decision, remains outstanding as no decision, I was told, has yet been made on it.

34.
Thirdly, the structure of the Immigration Rules, as they apply to Tier 4 Student applications, is beyond doubt. In order to succeed under the Rules, the applicant must already have a valid CAS. In other words, acceptance on a course of study followed by the issuing of a CAS is a prerequisite to a successful application for leave as a Tier 4 Student under the Rules. The purpose of such an application is to obtain the required leave to study the applicant's chosen course. It would be nonsensical to require that an applicant already have leave to study the course for which he is applying for leave to study. Paragraph 245ZX does lay down some requirements concerning an applicant's immigration status but it does not require either that the applicant should have existing leave (providing he has not overstayed for more than 28 days) (see paragraph 245ZX(n)) and, with one exception, the leave to remain must be for the purposes of study which will commence within 28 days of the expiry of the individual's current leave or, where he has overstayed, within 28 days of when that period of overstaying began (see para 245ZX(l)).

The Submissions

35.
With those points in mind, I turn to the main issues raised by the applicant in his submissions and by Mr Jowett on behalf of the Secretary of State.

36.
The applicant submitted that the Secretary of State had failed to give effect to Judge Archer's decision and to grant him leave adequate to obtain admission to a university to continue his studies. He relied upon the emails from the various universities denying, he said, admission on the basis of his immigration status. In particular, he relied upon the email exchanges in September 2014 which denied him admission on the basis of his 60 day visa granted in August 2014.

37.
Mr Jowett submitted that the Secretary of State had acted lawfully in her response to Judge Archer's decision. First, he submitted that the deferment by 60 days of the decision on the applicant's application set out in the respondent's letter of 22 May 2014 was a rational response. Indeed, he submitted that the Secretary of State had, perhaps, been "generous" in granting a 60 day deferment when the evidential flexibility rule in para 245AA (when it applied) required a response within seven days. He submitted that the 60 day period, perhaps reflecting the respondent's policy when an educational sponsor's licence was revoked, allowing for 60 days for an individual to find a new sponsor, was sufficient. It reflected the Upper Tribunal's adoption of 60 days as a fair period of time in cases such as Patel (Revocation of sponsor licence – fairness) [2011] UKUT 00211 (IAC). Mr Jowett

submitted that was a fair period for the applicant to remedy the defect in his application, namely the absence of a valid CAS. Mr Jowett submitted that, even if the applicant had not been informed by his then solicitors, Albany Solicitors, of the contents of the respondent's letter of 22 May 2014 immediately (which delay he did not accept), any delay was in any event a matter between the applicant and his solicitors and not for the Secretary of State. Likewise if an academic institution misunderstood the application of the Rules so as to consider the applicant's (then) leave under s.3C as insufficient, that, again, was not a matter which demonstrated unlawfulness on the part of the Secretary of State. Mr Jowett submitted that, in any event, the email exchanges in June and July 2014 did not show that the applicant had taken the step of making an application. Mr Jowett submitted that, as a result, the applicant's case must fail.

38.
Further Mr Jowett submitted that, even though the Secretary of State had, subsequently, gone on further to assist the applicant by granting 60 days' discretionary leave to remain on an exceptional basis, that further generous approach to the applicant was immaterial as the respondent's first decision to defer consideration of his application for 60 days was, in itself, a reasonable implementation of Judge Archer's decision. However, Mr Jowett submitted that even if the first decision did not defeat the application for judicial review, the subsequent grant of 60 days' leave on 18 August 2014 reasonably and rationally implemented Judge Archer's decision.

My Conclusions

39.
Judge Archer's decision did not require the Secretary of State to grant the applicant leave to remain as a Tier 4 Student. It simply required that the applicant should have a fair opportunity to obtain and submit a new valid CAS. It has not been suggested that the respondent's delay until May 2014 in responding to Judge Archer's decision was, in itself, unlawful. That delay was necessitated by the applicant's arrest and subsequent criminal proceedings which only terminated on 26 April 2014. It would, frankly, have been wholly unrealistic to require the applicant to sort out his student status with a view to beginning a course during this time. There was, therefore, nothing unlawful in the Secretary of State delaying until those proceedings were completed.

40.
In my judgement, the respondent's decision (communicated in her letter of 22 May 2014) to defer consideration of the applicant's application for 60 days until 21 June 2014 was an entirely reasonable response to Judge Archer's decision that the respondent's decision was unfair. Mr Jowett was correct to point out that if paragraph 245AA of the Rules applied, so that the Secretary of State requested from an individual further documents not submitted with the application, the documents must be submitted within seven working days (see para 245AA(iv)). The applicant's circumstances did not, however, fall within the rubric of paragraph 245AA(b) so as to engage the "evidential flexibility" provisions of that Rule. This was not a case where one or more documents in a sequence had been admitted, a document was in the wrong format, a copy document rather than an original had been submitted or a document had been submitted which did not contain all the specified information. Here, a required document, namely a valid CAS (or its reference number) had not been submitted. On the basis of the case law, most recently Kaur , the Secretary of State's letter of 22 May 2014 went beyond the strict requirements of the law but properly reflected the judicial decision of Judge Archer which was binding upon her. Deferring a decision for 60 days was a rational and reasonable response to Judge Archer's decision.

41.
Further, nothing in the evidence suggests other than that the 60 day deferral provided the applicant with a reasonable and sufficient time to obtain a valid CAS. The applicant was unable to tell me when he received the respondent's letter. As I have already set out, his (then) solicitors wrote a letter to him on 27 May 2014 in which they enclosed the respondent's letter together with the three documents which had been enclosed with that letter from the Home Office. The representative's letter is addressed to the applicant's home address. It is difficult to see how he did not receive it shortly thereafter. In any event, it is clear that he had received it no later than 20 June 2014 because in a number of emails to the Universities he attaches the documents that had been enclosed with his solicitor's letter of 27 May 2014, namely his passport, biometrics and information leaflet. That is clear, for example, from his email of 20 June 2014 addressed to Cardiff University (at page 39 of the first bundle). Indeed, the email exchanges show that the applicant had begun to enquire about admission to courses prior to 20 June 2014. It is not clear that I have the full email correspondence in the bundles but, for example, the applicant's email to Cardiff University on 20 June 2014 starts "Thank you for reply" which shows that the applicant had been in contact prior to that date and Cardiff University had also responded prior to that date.

42.
The applicant places reliance upon the email exchanges in the June/July 2014 period to demonstrate, he says, that the respondent had not acted lawfully so as to put him in a position to obtain admission and, in particular, a valid CAS. I do not accept that submission.

43.
First, it is far from clear on this correspondence that the universities were indicating that the applicant could not, given his current immigration status, gain admission providing all other admissions requirements were met. In his correspondence with Swansea University the applicant, in an email dated 17 June 2014, stated:

"I want to seek for 2014 admission in your university to study MSc Accounting and Finance but my visa extension is being processed by the Home Office and not yet granted. I would like to know if you can offer admission without visa as my visa is yet to be granted and/or issued. Please confirm".

44.
In response, the university replied:

"Please can you confirm what visa you have at any (sic) moment? Please would you be able to send me a copy? Also what visa have you applied for? Is it a different type?"

45.
The applicant then replied:

"I had a student visa that expired in July 2012 and I applied for extension but Home Office refused the application in February 2013. Then I went to court for appeal in July 2013 which the court allowed.

Thereafter Home Office took me to another court (not an appeal for the case I won in July 2013) but on a different case though related to immigration case, which I still won. Home Office had recently asked whether I should first gain admission (sponsor) before it grant visa extension. This is the area of the problem. Right now I do not have any valid visa and I would like to know if your university can offer admission before my visa is granted and issued".

46.

Then, on 23 June the university responded saying:

“We need to have more information to assess your admission status. Could you please send us copies of your visas and any appeals decision to help us assess your visa status and eligibility to study in the UK. Please send any immigration related query to [] ”.

47.
As that exchange makes clear, the issue of the applicant’s immigration status as a factor relating to his admission remained open and the university simply sought more information.

48.
In relation to Cardiff University in response to the applicant’s email of 20 June 2014, to which I have already referred, in which he asked for confirmation whether the passport, biometrics and information leaflet sufficed in place of a visa and to “Please confirm if you are able to use them as substitute to visa to offer admission”, Cardiff University responded on the same day stating:

“Can you please let us know why you do not have your visa we have noticed that the date on the Biometric Enrolment letter is dated 21/12/2012.”

Again, the applicant’s immigration status remains a matter to be explored between the university and him.

49.
In relation to the University of South Wales, the correspondence relevant to this period is an email dated 20 June 2014 which attaches the certified copy of the applicant’s passport, biometrics and information leaflet from the Home Office and seeks confirmation as to whether these may be used to offer admission in place of a visa.

50.
In relation to Bath University, following the applicant’s inquiry on 16 July 2014, on 17 July 2014 the university responded that the deadline for international applications had passed on 30 June 2014 and they were no longer accepting any applications.

51.
In relation to Lancaster University, the applicant made an inquiry on 17 June 2014 and on 18 June 2014 the university responded that:

“In order for us to consider your suitability for our MSc Accounting and Finance course, you will need to supply a full application.”

52.
Neither of these responses indicates the universities’ positions as regards the applicant’s immigration status.

53.
Finally, as regards Manchester University, the applicant made his initial inquiry on 16 July 2014 and the university’s response on 17 July 2014, in some detail, directed the applicant to the process for making a full application.

54.
In my judgement, nothing in these responses demonstrates that the respondent had, by deferring a decision on his application, irrationally failed to provide him with an opportunity to obtain a valid CAS.

55.
At this stage, at least, none of the universities were propounding the erroneous position that the applicant's leave was inadequate to permit a successful application under the Tier 4 Student Rules. The applicant, of course, had (as he has throughout had) s.3C leave on the same basis as he was granted student leave in October 2010. The applicant clearly had personal notice of the respondent's position set out in her letter of 22 May 2014. In my judgement, it was entirely reasonable for the Secretary of State to communicate directly with the applicant's solicitors who appear to have informed the applicant of the respondent's letter, enclosing the documents enclosed with that letter, in their own letter to the applicant of 27 May 2014. Despite the invitation by the universities to do so, the applicant did not make an application, and indeed as I understand it has still not made an application, to any university seeking leave as a Tier 4 Student. At that time, and subsequently, he has gone no further than making inquiries.

56.
Mr Jowett submitted that it was not necessary for the Secretary of State to rely upon her decision to grant the applicant 60 days' leave on 18 August 2014 because her letter of 22 May 2014 was itself sufficient to defeat the application for judicial review. However, even if it was not, he submitted that the subsequent grant of 60 days' leave on 18 August 2014 reasonably and rationally implemented Judge Archer's decision.

57.
I agree that the respondent's response to Judge Archer's decision as set out in her letter of 22 May 2014 was, in itself, a reasonable and rational response to his finding that her original decision was unfair and is a complete answer to the applicant's claim. Nevertheless the subsequent decision of the respondent on 18 August 2014 only adds weight to the view that the respondent has acted reasonably throughout.

58.
As I have already noted, on 14 July 2014 the applicant's new solicitors, Duncan Lewis, wrote to the respondent seeking a grant of six months' discretionary leave in order to allow the applicant to apply for a course and obtain a valid CAS. On 18 August 2014, the applicant was granted 60 days' discretionary leave outside the Rules and, in particular, the respondent's letter indicated that the applicant would be allowed to "switch" into the Tier 4 category within this period.

59.
It is not entirely clear to me why the applicant needed any dispensation in order to "switch" into a category in which he already was, namely a Tier 4 Student. Nevertheless, armed with that grant of leave, the applicant again contacted the universities. The email exchange is set out at pages 14a-21b of the applicant's second bundle. The applicant argues that these emails demonstrate that the respondent's response to Judge Archer's decision was not reasonable as some of the responses indicated that his "60 day visa" would not be acceptable. That view is expressed by Lancaster University in its email of 1 September 2014 (at page 14a) and by Cardiff University in its email dated 4 September 2014 (at page 17). In similar, but perhaps not identical, terms the University of South Wales advised the applicant that:

"As your visa has not yet been extended we would advise you to wait for your visa to be granted. Once you have successfully obtained a Tier 4 visa you can then make a new application to study MSc Accounting at the University of South Wales using the online application form."

60.

Not all the responses were in those terms. The response from Manchester University (at page 20) dated 8 September sets out the correct chronology as follows:

“You would first need to apply for the MSc Accounting and Finance, then if your application is successful we will issue a Confirmation of Acceptance to Study (CAS) number, which you would then use to apply for your Tier 4 visa with UK Visas and Immigration.”

61.
The email goes on to state that, unfortunately, as the course was due to start on 15 September 2014 there was not enough time to apply for the course that year and that applications for September 2015 would open in October 2014.

62.
Further, the applicant having attached his 60 day visa valid until 17 October 2014, Bath University responded that the closing date for international students was 30 June and the course was now closed such that the university would only consider applications for 2015.

63.
In my judgement, the Secretary of State cannot be held responsible for the fact that a university misunderstands the process by which a student can successfully obtain a Tier 4 visa. The process begins with an application to the university which, if successful, leads to a CAS being issued and the individual then applying for his Tier 4 leave. That position appertained (and as far as I can see still does so) given that the applicant has since 15 July 2012 had continuing leave under s.3C of the Immigration Act 1971. If that was not sufficient, the respondent’s letter of 18 August 2014 makes plain that the grant of 60 days’ discretionary leave on an exceptional basis (at the request of the applicant’s own solicitors) was sufficient to found an application by the applicant for Tier 4 leave and was not a bar to any such application and, if that were successful, to a university issuing a CAS.

64.
That letter was sent to the applicant’s new solicitors on 18 August 2014. The applicant raised with me that he had not in fact received that letter, and its enclosures, until he collected them from the solicitor’s office on 2 September 2014. Any delay between the receipt of the respondent’s letter and 2 September 2014 was, in my judgement, not something for which the respondent could be held at fault. It was entirely reasonable for the respondent to send the letter and any enclosures directly to the applicant’s solicitors as notified by them to the Home Office. I am unable to say that the applicant was not given a reasonable period of time in which to make a new application following the letter of 14 August 2014. Even if some universities had “closed their books” by this time, others had not. The applicant had a reasonable opportunity to make a new application for the 2014-2015 academic year. It was not unreasonable or irrational for the Secretary of State to expect universities to apply the Tier 4 process in its proper, and chronological, order.

65.
My conclusion in respect of the 18 August 2014 letter, of course, is not strictly necessary as the respondent’s initial decision to defer consideration of his application set out in her letter of 22 May 2014 was, in any event, a reasonable response in order to give effect to Judge Archer’s decision.

66.
I would add finally that the applicant referred to his medical condition in the course of the hearing. Suffice for me to say that there is nothing before me to suggest that any aspect of the applicant’s health affected whether he could apply for or obtain admission to a university in the UK. It is not, in

my view, of any relevance to the legality of the respondent's response to Judge Archer's determination.

Decision

67.
Consequently, the Secretary of State's responses to Judge Archer's determination in her letters of 22 May 2014 and 18 August 2014 were not irrational or unreasonable.

68.
For these reasons, the Secretary of State acted lawfully and this claim for judicial review is dismissed.

Signed

A Grubb

Judge of the Upper Tribunal