



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/11730/2013  
IA/11731/2013

THE IMMIGRATION ACTS

Heard at Field House  
On 3 December 2013

Determination promulgated  
On 9 December 2013

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

THE SECRETARY STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS RIDMIKA DULARI ARAWWALAGE  
MR THUSHARA SAMAN KUMARA RANHALUGE  
(Anonymity direction not made)

Respondents

**Representation:**

For the Appellant: Mr N Bramble a Senior Home Office Presenting Officer

For the Respondents: Miss A Nizami of counsel instructed Sahida & Co Legal Services

**DECISION AND DIRECTIONS**

1. The appellant is the Secretary of State for the Home Department. I will refer to her as the Secretary of State. The respondents are citizens of Sri Lanka and husband-and-wife. She was born on 14 July 1979 and he on 13 August 1977. I will refer to them as the claimants. The Secretary of State has been given permission to appeal the determination of First-Tier Tribunal Judge V A Cox ("the FTTJ") who allowed the claimants' appeals against the Secretary of State's decisions of 27 March 2013 to refuse the wife leave to remain in the UK as a Tier 4 (General) Student Migrant under the Points-based System and for a Biometric Residence Permit and to refuse the husband leave to remain as her dependant. The Secretary of State also gave directions for their removal from the UK under the provisions of Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. I heard the Secretary of State's appeal against the FTTJ's decision on 17 October 2013. On 18 October 2013 I issued a Decision and Directions which is annexed to this determination. It should be read with this determination, preferably first. I will not repeat what I said there.
3. Mr Bramble informed me that the Secretary of State had not complied with my directions. Clearly he has made repeated efforts to get the appropriate department to consider and reach a decision on the correction letter starting soon after the hearing on 17 October and culminating with the manager of the appropriate department telling him this morning that they would look for the file. I have been given copies of Mr Bramble's memo and e-mails. Telephone calls have not been returned or e-mails answered. Mr Bramble accepted that the directions had given the Secretary of State ample time to deal with the correction letter and to make a decision.
4. Miss Nizami submitted that the Secretary of State had provided no basis on which to challenge the correction letter. I was asked to uphold the decision made by the FTTJ by remaking it and allowing the appeal. The claimants were privately funding the appeal and absent any prior notification from the Secretary of State as to what the position would be at the hearing today they had to instruct counsel to attend on their behalf.
5. The only basis on which I found that the FTTJ erred in law and set aside her decision was because, when dealing with a paper case, she had not adjourned to give the Secretary of State the opportunity to consider the correction letter. That opportunity has now been given. Mr Bramble accepted that there was sufficient time for the Secretary of State to consider and react to the correction letter. She has not done so and has not given any good reason for failing to do so. At the hearing on 17 October I indicated to Mr Bramble that I would be reluctant to grant a further adjournment unless the Secretary of State could show a compelling reason for doing so. She has not.
6. There has been no criticism of the FTTJ's decision to allow the appeals against the Section 47 removal directions. The only criticism of her decision to allow the appeals under the Immigration Rules was in relation to procedural unfairness. The Secretary of State has now had the opportunity to show that the procedural unfairness would have made a difference to the conclusion, for example if the correction letter was disputed in any way, but has failed to do so. Having set aside the decision of the FTTJ I remake it and conclude that for the reasons she gave the claimants have established that they met the requirements of the Immigration Rules.
7. I allow the claimants' appeals.

Signed:.....  
Upper Tribunal Judge Moulden

Date: 4 December 2013

## DECISION AND DIRECTIONS

1. The appellant is the Secretary of State for the Home Department. I will refer to her as the Secretary of State. The respondents are citizens of Sri Lanka and husband-and-wife. She was born on 14 July 1979 and he on 13 August 1977. I will refer to them as the claimants. The Secretary of State been given permission to appeal the determination of First-Tier Tribunal Judge (FTTJ) V A Cox who allowed the claimants appeals against the Secretary of State's decisions of 27 March 2013 to refuse the wife leave to remain in the UK as a Tier 4 (General) Student Migrant under the Points-based System and for a Biometric Residence Permit and to refuse husband leave to remain as her dependant. The Secretary of State also gave directions for their removal from the UK under the provisions of Section 47 of the Immigration, Asylum and Nationality Act 2006.
2. The claimants made their applications on 16 February 2012. When refusing them the Secretary of State accepted that the wife was entitled to the claimed 30 points for Confirmation of Acceptance for Studies and the claimed 10 points the Maintenance (Funds). The applications were refused on one point only. With her application the wife submitted a letter from the Accrediting & Assessment Bureau for Post Secondary Schools (AABPS) confirming that she had been awarded a Level 4 Diploma in Business Management Studies on 22 August 2011. According to the reasons for refusal letter somebody from the UKBA contacted the AABPS who said that the wife had never been registered with them and had not obtained an accredited award. As a result there were additional grounds for refusal under paragraph 322 (1A) of the Immigration Rules on the basis that the wife had used deception. If this is upheld it would have severe consequences for any future application to come to the UK.
3. The wife contacted AABPS who issued an open letter dated 22 April 2013 in which they confirmed that she had been awarded a Level 4 Diploma in Business Management Studies on 22 August 2011 and that the error occurred because she had been registered under an incorrect date of birth during the registration process at AABPS. Clearly this was an error on the part of AABPS which neither the wife nor the Secretary of State had been aware of. I will refer to this is the correction letter.
4. The claimants appealed and the FTTJ was asked to determine the appeal on the papers, which is what she did. The claimants' representatives submitted a bundle of documents including a copy and the original of the correction letter and written submissions.
5. The FTTJ determine the appeal on 26 July 2013. She concluded that there had been no deception and that the claimants met the requirements of the Immigration Rules. She allowed both appeals including the appeals against the Section 47 decisions.

6. In the grounds of appeal accompanying her application for permission to appeal the Secretary of State alleges that the FTTJ erred in law by not adjourning the hearing to give her the opportunity to check and consider the correction letter. It was argued that the failure to do so amounted to procedural unfairness.
7. The first question that arose at the hearing before me was whether the correction letter had been submitted to the Secretary of State at any time and in particular prior to the hearing before the FTTJ. Mr Bramble said that there was no evidence on his file to indicate that this had been done. Mr Davison said, on instructions that the claimants thought that it had been sent but were unable to say when or how. This is not surprising because they thought that it had been sent by their representatives. Mr Davison was not able to produce any evidence to show that the representatives had sent the correction letter to the Secretary of State. On the Tribunal file I found a letter from the claimants' representatives dated 18 July 2013 sending the claimants documents to the tribunal. These included the original of the correction letter. There was no indication that the letter or its enclosures had been copied to the Secretary of State. However, set against this, in paragraph 7 of the determination the FTTJ said; "none of the parties have requested an oral hearing and none of the parties have submitted any documents that have not been seen by the other party".
8. No evidence can be found on the Tribunal file and neither representative has been able to provide me with any evidence that the correction letter had been submitted to the Secretary of State at any time prior to the hearing before the FTTJ. The weight of the evidence points to the conclusion that it had not, which is the conclusion I reach.
9. I accept Mr Davison's submission that in these circumstances there was no mandatory requirement for the FTTJ to grant an adjournment. The decision was within her discretion. However, in the light of my finding in the last paragraph, Mr Davison accepted and I find that justice required an adjournment to give the Secretary of State the opportunity to inspect and consider the correction letter. The failure to do so amounted to procedural unfairness and was an error of law.
10. There is no criticism of the decisions to allow the appeals against the Section 47 removal directions and these stand. I set aside the decisions to allow the appeals under the Immigration Rules. It will be necessary to remake these decisions unless, after considering the correction letter, it is accepted by the Secretary of State who decides to grant the claimants applications. The directions which I have given below are designed so that the appeals only need to be reheard if the Secretary of State maintains her decisions.
11. I record that I gave the original correction letter to Mr Bramble.

## **DIRECTIONS**

No later than 28 November 2013 the Secretary of State is to consider the correction letter and inform the Upper Tribunal and the claimant's representatives whether she maintains her decisions and if so on what basis