



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

Appeal Number: IA/26786/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12<sup>th</sup> December 2014**

**Determination Promulgated  
On 30<sup>th</sup> December 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR FOYSAL AHMED  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No appearance  
For the Respondent: Mr L Tarlow (HOPO)

**DETERMINATION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Gurung-Thapa, promulgated on 12<sup>th</sup> September 2014, following a hearing at Stoke-on-Trent on 21<sup>st</sup> August 2014. The hearing was conducted “on the papers”. The judge dismissed the appeal of Foyisal Ahmed. The Appellant subsequently, applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a male, a citizen of Bangladesh, who was born on 10<sup>th</sup> August 1987. He appeals against the decision of the Respondent Secretary of State dated 16<sup>th</sup> June 2014, refusing to vary his leave to remain in the UK, consequent upon his application to remain in this country as a Tier 4 (General) Student Migrant.

## **The Appellant's Claim**

3. The Appellant's claim is that he is in a position to show possession of £2,200 for a consecutive 28 day period, such as to meet the maintenance requirements. The judge found that the Appellant "submitted an ad hoc printout bank statement but it was not in the appropriate format". (Paragraph 6). The application was refused under paragraph 245ZX(c) and (d) of the Immigration Rules.

## **The Judge's Findings**

4. The judge considered that the Appellant's CAS was assigned on 29<sup>th</sup> April 2014 to study a diploma in strategic management which is at NQF level 7, and is above degree level. (Paragraph 3). The Appellant has submitted a City and Guilds certificate with his application "but the certificate did not show that the Appellant had passed the speaking component of the test" for the English language (at paragraph 3).
5. Accordingly, on 29<sup>th</sup> May 2014 the Respondent contacted the Appellant "to request the correct document and provided the deadline on 9<sup>th</sup> June 2014 for the document to be submitted. The Appellant failed to supply a new document within the deadline as requested" (paragraph 4).
6. The judge concluded that, "as correct evidence has not been submitted the Appellant has not achieved the minimum standard of English in all four components of the English language test which is required. No points were awarded for the CAS" (paragraph 5).
7. Before the judge, it had been suggested by the Appellant that he was not contacted by the Respondent (paragraph 10). The judge reasoned that,

"Whether or not the Appellant was contacted by the Respondent, I note it is significant that the Appellant has not dealt with the issue that he failed to provide the city and guilds certificate to show that he had passed the speaking component of the test. The Appellant I note had only submitted the city and guilds certificate for reading, writing and listening" (paragraph 11).

Accordingly, the judge had no doubt that "the Appellant does not meet the requirement of paragraph 245ZX(c)" (at paragraph 12). The appeal was dismissed.

### **Grounds of Application**

8. In his grounds of application, the Appellant concedes that he was contacted by the Respondent Secretary of State but the e-mail went into his junk box.
9. On 7<sup>th</sup> November 2014 permission to appeal was granted. However, it was granted with full recognition of the fact that this was not the only basis for the Secretary of State's refusal because "the application had also been refused on maintenance grounds and the judge found that it did not appear that he had sent the correct original bundles in relation to this issue" (see paragraph 2 of the grant of permission).
10. Nevertheless, because the Appellant was maintaining that the e-mail request from the Respondent had gone into his junk box, the judge should have satisfied herself that the Appellant had received communication from the Respondent as he maintained.
11. On 19<sup>th</sup> November 2014 a Rule 24 response was entered. This makes two specific points. First, that it now appeared clear that the Appellant had conceded that the e-mail went into his junk mail. This suggests that it was received. If it was received then it was sent. If it was sent, then the Appellant should have responded to it. Second, even if there was no issue with respect to the e-mail going into the junk box, the fact was that the Appellant did not provide the required documents to meet the Rule.

### **Submissions**

12. At the hearing before me, there was no attendance by the Appellant or by a legal representative on his behalf. I note that the previous hearing had been conducted also "on the papers". Nor, was there any explanation given on this occasion why the Appellant was not in attendance. Appearing on behalf of the Respondent Secretary of State, Mr Tarlow submitted that he would place reliance upon the Rule 24 response. First, the Appellant admits that he was sent an e-mail by the Respondent requesting him to provide the original documents. Second, he did not provide the documents, and did not do so before the original judge, and has not done so before this Tribunal either. Therefore, the documents do not exist. If they do not exist, the error by the judge, such as it was, could not be a material error.

### **No Error of Law**

13. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA) such that I should set aside the decision. My reasons are as follows.
14. First, it is clear that a request had gone out by the Respondent to the Appellant. The Appellant wrongly argued before the original judge that there was no such request. It is only in his Grounds of Appeal that it is clear that he did receive this, albeit in his junk box. He should have checked his junk box.

15. Second, and in any event, the judge's reasoning was on the basis that, "whether or not the Appellant was contacted by the Respondent I note it is significant that the Appellant has not dealt with the issue that he failed to provide the city and guilds certificate ... .." (paragraph 11). This suggests that the judge considered the position from every angle and concluded that the failure on the part of the Appellant, namely, his failure in providing a city and guilds certificate showing that he had passed the speaking component of the English language test, was such as would place him outside paragraph 245ZX(c).
16. Third, there was no evidence even before the original judge, and there is no evidence even before this Tribunal today. Accordingly, there has simply been a failure to provide the evidence which the Appellant knows should have been provided. The decision of the judge was the only one open to her.

**Decision**

17. There is no material error of law in the original judge's decision. The determination shall stand.
18. No anonymity order is made.

Signed

Dated

Deputy Upper Tribunal Judge Juss

29<sup>th</sup> December 2014