



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

Appeal Number: IA/37363/2013

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**On 1 September 2014  
Decision given orally**

**Determination  
Promulgated**

**On 10 September 2014**

**Before**

**UPPER TRIBUNAL JUDGE DAWSON**

**Between**

**ABDUL RAHIM NURUL AMEEN BABU**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: The appellant appeared in person

For the Respondent: Mr A McVeety, Senior Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a national of India where he was born on 5 September 1988. He has been in the United Kingdom since 20 May 2011. He was granted leave to enter as a student until 31 August 2014, however this was curtailed on 25 May 2012 because the college at which he was studying was removed from the list of approved educational providers by

the Secretary of State. Within the time given to the appellant following that curtailment he made application for further leave to remain for a purpose not covered by the Rules on 24 May 2012. This was refused in brief terms by the respondent under paragraph 322(1) of the Immigration Rules on the basis that the appellant's situation was not considered compelling enough for the grant of exceptional leave. He had sought an extension of leave in order to secure further study opportunities. The appellant appealed against that decision.

2. The grounds of appeal refer to the consequences for the appellant of the failure of the college and his decision to marry a British citizen on 23 June 2012. He feared the parents of a person in India with whom a match had been arranged.
3. The appellant requested that the appeal be decided on the papers. He was informed by the First-tier Tribunal that his notice of appeal had not been given until 11 September 2013 and did not include an application for time to be extended. He was invited to comment on that and to provide details of any special circumstances for failing to give notice of appeal in time by no later than 27 November 2013. He replied with a letter that was received on 25 November 2013; the appellant enclosed copy of tracking details in support of his contention that he had appealed in time. He also asked for an oral hearing and proposed to pay the difference in cost. According to a note of an Immigration Judge dated 19 December 2013 the appeal was accepted in time with an endorsement "NB request to change to oral hearing to be actioned". A letter was sent by the First-tier Tribunal dated 20 December 2013 confirming that it was accepted the appeal had been lodged in time. No comment was made however with regard to the appellant's request to switch to an oral hearing.
4. On 23 December 2013 notice was sent to the appellant explaining that he had indicated that he wanted the appeal to be decided on the papers without a hearing and any further written evidence or submissions should be received by 20 January 2014. Meanwhile the appellant had moved from his address in London E12 to Manchester on 9 December. He sent an email to the First-tier Tribunal on 24 December explaining that he had moved address. This follows a telephone call he had made the day before when he was invited to put these details in writing. It appears that the email was not acknowledged by the First-tier Tribunal until 31 December with an explanation that information could not be supplied to an email address that was not in the name of somebody not recorded on the database. The appellant was invited to provide further information which he explains he sent the same day.
5. The next development was notification by the First-tier Tribunal of the determination of the First-tier Tribunal dismissing the appeal after consideration on the papers. Permission to appeal that decision was granted on 24 April 2014.

6. Mr McVeety does not oppose the appeal. It is evident that the appellant was slow in notifying the First-tier Tribunal of his change of address but it is clear that by 24 December, if not the day before, the First-tier Tribunal was aware that the address had changed. Furthermore the First-tier Tribunal appears to have overlooked the request for an oral hearing. It is that failure to act on the request for an oral hearing that persuades me there was a procedural irregularity in this case and that the appellant was unfairly denied the oral hearing that he had requested.
7. Accordingly I set aside the decision of First-tier Tribunal Judge Turnock and I remit the case to the First-tier Tribunal for a hearing at which the appellant can attend and give evidence. He is aware that he will need to pay the additional fee for that to take place.

Signed

Date 9 September 2014



Upper Tribunal Judge Dawson