



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/00206/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 11 July 2016

**Decision & Reasons
Promulgated
On 20 July 2016**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**IRFAN SHEIKH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Bajwa, counsel, instructed by A Bajwa & Co Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a resumed appeal by the Appellant against decisions by the Secretary of State to refuse to grant him leave to remain as a Tier 4 (General) Student and to remove him from the UK by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006. Judge of the First-tier Tribunal Raymond allowed the Appellant's appeal in a decision promulgated on 28 October 2015 but I identified a material error of law in the judge's decision following a hearing in the Upper Tribunal on 07 June 2016. My reasons for finding a material error of law are contained in my decision promulgated on 09 June 2016.

Background

2. The Appellant is a citizen of Pakistan born on 10 March 1983. He was granted leave to enter the UK as a Tier 4 (General) Student on 10 December 2010, valid until 28 December 2011. On 19 June 2012 he was granted further leave to remain as a Tier 4 (General) Student valid until 13 January 2014. On 01 July 2013 the Appellant applied for further leave to remain as a Tier 4 (General) Student to study at the Academy De London. This institution lost its licence and the Appellant then varied his application to enable him to study at the London Academy of Management Sciences (LAMS). The application form relating to this application was dated 19 February 2014 and was proceed by the Respondent on 21 February 2014. This application form gives the Appellant's 'UK correspondence address' as '3-5 Ripple Road, Barking'. This is the address of LAMS. Although the Appellant also gave his home address [], he indicated that this was not to be his correspondence address. He then confirmed, in a further section of the application form, that his correspondence address was '3-5 Ripple Road, Barking'.
3. In a decision dated 04 December 2014, which was addressed to the Appellant at his home address, the Respondent refused the application. The application was refused for 4 reasons. (1) The Appellant was said to have been invited to attend an interview on 27 November 2014 to establish the genuineness of his application. He failed to attend the interview and the application was refused under paragraph 245ZX(o) of the immigration rules (by which the Secretary of State has to be satisfied that an applicant is a genuine student). (2) The Appellant failed to prove that he had knowledge of English equivalent to level B2 of the Council of Europe's Common European Framework for Language Learning because his TOEIC test certificate had been cancelled by ETS (there was no suggestion he had ever used a proxy tester) and he failed to provide a new test as requested in a letter written by the Respondent dated 27 July 2014 (which was sent to the LAMS address). (3) The application was refused under paragraph 322(9) of the immigration rules, one of the general grounds of refusal, on the basis that the Appellant failed to provide a document (a new English language test), and (4) the application was refused under paragraph 322(10) on the basis that the Appellant failed to attend an interview (the one arranged for 27 November 2014 to assess the genuineness of his application). It is clear that (1) and (4) relate to the same issue, as do (2) and (3).

The decision of the First-tier Tribunal

4. The First-tier Tribunal judge considered a handwritten witness statement prepared on behalf of the Appellant at the hearing. This stated, in material part,

The college informed me through email Irfan got a letter from Home Office (interview letter) on 20th November and they mentioned we have just

received letter now and get it ASAP. But they gave me only that letter in which home office just requested English language test but there were not mentioned for interview call even that date been expired as well because college got letter very late [sic].

5. The First-tier Tribunal noted the provision by the Appellant of an IELTS test certificate with an overall band score of 5 dated 29 January 2015. The judge did not take account of this certificate as it was provided after the decision under appeal.
6. The judge then heard, by way of oral evidence, the Appellant's 'somewhat convoluted account of his educational history'. In his oral evidence the Appellant stated that LAMS gave him the letter dated 27 July 2014 but that this did not mention an interview. He believed he was not sent the letter because it was sent to LAMS. The Home Office Presenting Officer was unable to provide a copy of the letter requiring the Appellant to attend an interview on 27 November 2014, although there was produced a letter from the Respondent relating to the provision of biometric information dated 27 February 2014 which was addressed to the Appellant at '3-5 Ripple Road, Barking'.
7. The judge allowed the appeal based on the absence of evidence that the Appellant was made aware of the request to attend an interview in November 2014. The judge found the Appellant's 'tortuous' account of his educational progress undermined his credibility, but nevertheless gave the Appellant the "*... benefit of the doubt over not having been informed in time of the opportunity to take a new test by September 2014 in a letter addressed to him on 27.07.14 at 3-5 Ripple Road in Barking, which is the LAMS address, because, according to his evidence, in the chaos surrounding the revocation of its licence, during which students were not able to attend classes, he was not informed by the college of this Home Office letter until November 2014, after which he successfully took the IELTS as soon as he could.*"
8. The judge then noted that the refusal decision under appeal was sent to the Appellant's home address. The judge found this address was available to the Appellant and should have been appreciated by her as being the most viable address given that the college's sponsorship licence had been or was in the process of being revoked. The judge found that the seriousness of the matter required the Respondent to copy any correspondence to the Appellant's residential address.

The error of law in the First-tier Tribunal judge's decision

9. At [25] the First-tier Tribunal judge allowed the appeal "*... as regards non-attendance of a November 2014 interview as there is no evidence that the Appellant was made aware of this.*" This assertion was however contradicted by the Appellant's handwritten statement in which he claimed his college did inform him of an 'interview letter' from the Home Office received on 20 November 2014. Although the HOPO in the First-tier Tribunal was unable to provide a copy of this letter, and

the college did not, on the Appellant's account, provide him with the interview letter, it was apparent from his statement that the college has received a letter from the Respondent requesting that the Appellant attend an interview. The judge failed to take the content of the handwritten statement into account in reaching his conclusion and failed to resolve a factual conflict in the evidence.

10. Moreover, in his application dated 19 February 2014 the Appellant provided the Respondent with a correspondence address of 3-5 Ripple Road, this being the address of his college (LAMS). This was confirmed as the correspondence address at two separate parts of the application form. The Appellant had received correspondence from the Respondent sent to this address. This was clear from the letter he produced at the First-tier Tribunal hearing dated 27 February 2014. The Appellant also accepted that he received from LAMS the letter dated 27 July 2014. I was satisfied that the Respondent was fully entitled to regard '3-5 Ripple Road, Barking' as the Appellant's correspondence address. There was no requirement for the Appellant to send correspondence to any address other than the correspondence address. By giving his college as his correspondence address the Respondent effectively authorised the college to receive communication on his behalf (*Hosier v Goodall* [1962] 1 All E.R. 30). In these circumstances, and to the extent that the First-tier Tribunal judge considered there was procedural unfairness because the college had not informed the Appellant of the two letters in a timely manner, no consideration was given to the case of *Marghia (procedural fairness)* [2014] UKUT 00366 (IAC). Nor was it clear how the judge could have allowed the appeals under the immigration rules as the Appellant had clearly not met the requirements of Appendix A. For these reasons I was satisfied the First-tier Tribunal decision was vitiated by material errors of law. I relisted the matter to enable further evidence to be given by either party and for further submissions to be made in light of my identification of the errors of law.

The resumed hearing

11. Prior to the resumed hearing the Respondent served a further copy of the letter of 27 July 2014, addressed to the Appellant at the LAMS address and indicating that a new English language test would be required following the cancellation of his earlier ETS test. The Respondent additionally served the letter of 17 November 2014, again addressed to the Appellant at 3-5 Ripple Road, inviting him to attend and interview on 27 November 2014. The Appellant served no further documentary evidence.
12. In his oral evidence the Appellant confirmed that he was happy for his witness statement to stand as evidence in chief. He claimed, without any supporting evidence, that the college's licence had been revoked by the time he received an email from the college informing him that a letter had arrived from the Respondent relating to an interview. He claimed the college's licence was revoked in March 2014. The Appellant confirmed that the college office was open during this period (that is,

up to and including November 2014). The Appellant had been informed by a lady in the office that they were still fighting the decision by the Home Office and that when lessons were back he would be informed by email. The Appellant confirmed that he had provided his college address in his Tier 4 application form, and that the principal had completed the form giving the college address as the correspondence address. The Appellant claimed that the letter dated 27 July 2014 was the only one he received from the Respondent and that this letter was given to him by LAMS in November 2014.

13. In cross-examination the Appellant accepted that the college had received the November 'interview' letter but that they had not given it to him. When asked whether he had any evidence of the email communication with the college the Appellant said he did not. The Appellant accepted that he did not chase up the Home Office in relation to his interview. In re-examination the Appellant confirmed that the refusal to grant him further leave was sent to his home address.
14. In submissions Ms Isherwood invited me to find the Appellant incredible. The Respondent was not required to send correspondence to 2 different addresses. It was accepted that the refusal letter from December 2014 was sent to the Appellant's home address, but this possibly occurred because there had been no earlier contact from the Appellant. The interview date was to have been 27 November 2014 and the Appellant accepts that he went to the college on 20 November 2014. This suggests that the college did receive the 'interview' letter. It was open to the Appellant to have contacted the Respondent if he had not given an 'interview' letter but he failed to do so.
15. Mr Bajwa submitted that the letter of 27 July 2014 and the letter of 17 November 2014 could not be reconciled with each other. This was because, if the Appellant failed to provide a new English language test by September 2014, there would have been no point in the Respondent then seeking to invite the Appellant for an interview if his Tier 4 (General) Student application was bound to be refused. Mr Bajwa submitted that there had been a serious procedural impropriety in the Respondent sending letters to the college address in circumstances where the college's licence had been revoked. He submitted that the college was in effect 'dead' and that the Respondent ought to have been corresponding with the Appellant at his home address. Mr Bajwa additionally submitted that the cancellation of the Appellant's ETS English language test was illegal given the dubious nature of the evidence relied on by the Respondent in respect of the proxy tester scandal. Mr Bajwa made reference to a recent Court of Appeal decision dealing with the ETS cases but he was unable to provide a citation or a copy of the authority. I indicated that I would reserve my decision.

Discussion

16. Mr Bajwa contended that the Secretary of State should not have sent correspondence to 3-5 Ripple Road, the address of LAMS, because,

from March 2014 onwards, the colleges licence had either been suspended or revoked. Mr Bajwa did not provide any evidence as to when the college had its licence either revoked or suspended. What was however clear from the Appellant's oral evidence was that the college had an office that was open throughout the period from March 2014 up to and including the end of November 2014. The Appellant claimed he received an email from the college on 20 November 2014 indicating that an 'interview' letter from the Respondent had been received by them. This was confirmed by the Appellant in his hand written statement taken on the day of the appeal before the First-tier Tribunal. The Appellant attended the college on 20 November 2014, spoke to a lady working in the office, and, on his account, received a letter sent by the Respondent to the college on 27 July 2014. It is abundantly clear from this evidence that the college was not 'dead'. It may not have been operating so as to provide classes to students, but it is clear the administration was functioning.

17. The Appellant did not produce the emails he claims to have been sent by the college. This is surprising given the relative ease of printing out email correspondence. In any event, even accepting the Appellant's claim that he never received the letter of 17 November 2014, I am entirely satisfied that that letter was properly served on him by reference to the correspondence address given by him. It was entirely reasonable for the Respondent to send correspondence to the particular correspondence address provided by the Appellant, especially in circumstances where it is clear that the college administration was still functioning. If the Appellant did not receive the 'interview' letter from LAMS this was the fault of the college and not the Respondent. If the Appellant wanted the Respondent to send correspondence to his home address following the suspension or revocation of his colleges licence, then it was open to the Appellant to have informed the Respondent accordingly. There has been no procedural impropriety on behalf of the Respondent. Any unfairness to the Appellant has accrued because of the college's maladministration, not that of the Respondent.
18. Mr Bajwa makes the valid observation that there would have been little point in the Respondent seeking an interview with the Appellant to test the genuineness of his application if the Appellant had already failed to provide a fresh English language test. But this does not undermine the validity of the service by the Respondent of her letters of 27 July 2014 and 17 November 2014. Mr Bajwa pointed out that the refusal to grant further leave to remain, dated 4 December 2014, was served on the Appellant's home address. It is however unclear whether there was any intervening correspondence between the Appellant and the Respondent that altered the correspondence address. For the reasons I have already given I am entirely satisfied that the Respondent acted lawfully in serving her letters of July and November 2014 at the LAMS address. Mr Bajwa additionally relies on an unspecified Court of Appeal decision to support a vague submission that the decision underlying the cancellation of the Appellant's ETS English language test

was illegal. I have been unable to locate any relevant Court of Appeal decision. In any event the Respondent was unarguably entitled to cancel English language tests obtained via ETS given the concerns relating to proxy testers.

19. The Appellant's application for further leave to remain was rejected because he did not have a new English language test and because he failed to attend an interview designed to test the genuineness of his application. For the reasons I have given I am satisfied the Appellant was lawfully served with letters requesting him to undertake a further English language test and to attend an interview, and that his failure to do either constituted a lawful basis for the Respondent to reject his claim. This appeal is, accordingly, dismissed.

Notice of Decision

**The decision of the First-tier Tribunal involved the making of a material error of law.
The appeal is remade and is dismissed.**

No anonymity direction is made.



Signed

Date: 19 July 2016

Upper Tribunal Judge Blum