



IAC-FH-AR-V1

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

Appeal Number: IA/11844/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19 April 2016**

**Decision & Reasons  
Promulgated  
On 4 May 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HANBURY**

**Between**

**DHARMENDRAKUMAR CHANDUBHAI PATEL  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Unrepresented

For the Respondent: Mr D Clarke, a Home Office Presenting Officer

**DECISION AND REASONS**

1. This is a decision in the appeal of Mr D C Patel, following a hearing at Field House on 19 April 2016 at which the appellant was unrepresented and the respondent was represented by Mr Clarke, a Home Office Presenting Officer.

2. The appellant is a citizen of India who first came to the UK as a student on 5 May 2008. He subsequently (on 13<sup>th</sup> December 2014) applied for further leave to remain in the UK as a student but his application was refused on 12<sup>th</sup> March 2015 and the respondent decided to remove the appellant. It seems that prior to the decision to refuse his application he had been invited to attend an interview at the Home Office by a letter dated 2<sup>nd</sup> December 2014 offering him an interview on 10<sup>th</sup> December 2014. That letter was addressed to his address at [ ] HA3 8BL, where he still lives.
3. At this hearing the appellant has had the assistance of an interpreter through whom he explained that he did not receive the notification of the interview date in December 2014. That is an important piece of information because of the grounds on which his appeal to the First-tier Tribunal was dismissed is that he had failed without reasonable explanation to comply with a request to attend for interview. Paragraph 322 (10) of the Immigration Rules allows the Secretary of State to refuse leave to remain in the UK where there has been a failure on the part of the appellant to do so.
4. It is clear that the appellant was invited to attend an interview but as a result of information supplied by the respondent this morning (the CID case notes from the respondent's computer) it is clear also that, for reasons that are not transparent, the letter was returned to the Secretary of State marked "Not known" at this address. Perhaps the error was the Post Office's, but it seems clear that the letter from the respondent was correctly addressed but that it did not come to the appellant's attention. Therefore, in fact the appellant did not in fact have notice of the proposed interview date, time or venue.
5. I have considered whether it would be appropriate in the circumstances to allow the decision of the First-tier Tribunal, Judge Farrelly, to stand. In fairness to Judge Farrelly, he had decided the case on the papers because the appellant ticked the box in his appeal form notifying the Tribunal that that is what he wanted. Therefore, there was no explanation from the appellant's side as to his failure to attend for interview. However, in his grounds of appeal, with which I have been provided a copy today, it is clear that the appellant did raise all proper grounds of appeal in his concise grounds of appeal (clearer, it must be said, than some grounds professionally drafted by legal representatives). In those grounds the appellant pointed out (in paragraph 5) that he did not receive the letter inviting him for interview.
6. The appellant raised all possible grounds available to him and it is right to say that the Immigration Judge did touch on the grounds substantively because he she found that the appellant was not a genuine student within paragraph 245ZX(o) of the Immigration Rules. Nevertheless, out of fairness to both parties it is right that the Secretary of State should have a proper opportunity to consider the appellant's explanation for his alleged failure to comply with the requirements of the Immigration Rules in terms

of being a genuine student. This will require a fresh interview to be arranged.

7. It may well be that he is not able to provide an adequate explanation for his apparent failure to meet the requirement of being a genuine student, in which case the Secretary of State will undoubtedly come to the same conclusion. However, the Secretary of State will wish to make a proper assessment after the appellant has attended the interview at which the concerns about the appellant's course of study can be properly addressed.
8. I have considered whether it is possible simply to hear evidence from the appellant at the Upper Tribunal as to his satisfaction of the substantive requirements of the Immigration Rules. However, I have decided that it would not be appropriate to do so in light of the fact that the respondent should be given a proper opportunity to investigate what he says and consider the details of the institution where he attends before she reaches a fresh decision. It is not unknown in student cases for there to be concerns about those institutions or the level of attendance by the student applicant.
9. For these reasons I have decided that the fair course to adopt is to allow the appeal to the extent that I find that the Immigration Judge of the First-tier Tribunal erred by finding that there was no reasonable explanation for the failure to comply with the request when in fact there was a reasonable explanation in that the document inviting the appellant to interview had been returned without coming to his attention.
10. That of course was not known to the Immigration Judge but it is now known to the Upper Tribunal and the fair course to adopt is to remit the matter back to the Secretary of State to make a fresh decision which of course will trigger a new right of appeal.

### **Notice of Decision**

11. For these reasons I am allowing the appeal to the extent that the decision of the First-tier tribunal is set aside. The respondent's decision to dismiss the application for further leave to remain is also set aside as is her decision to issue removal directions. I am remitting the matter to the Secretary of State to make a fresh decision.
12. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Hanbury

**TO THE RESPONDENT**  
**FEE AWARD**

I make no fee award.

Signed

Date

Deputy Upper Tribunal Judge Hanbury