



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/34612/2014**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 February 2016**

**Decision & Reasons  
Promulgated  
On 29 February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SAFFER**

**Between**

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

Appellant

**and**

**MONIKABEN MAHESHKUMAR BHAVSAR  
(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr Avery a Home Office Presenting Officer  
For the Respondent: Miss Dogra of Counsel

**DECISION AND REASONS**

**Background**

1. For the purpose of continuity with the determination in the First-tier Tribunal I will hereinafter refer to the Secretary of State as the Respondent and Ms Bhavsar as the Appellant.
2. The Respondent cancelled the Appellant's leave to remain as a student on 22 August 2014. Her appeal against this was allowed by First-tier Tribunal Judge Chamberlain ("the Judge") following a hearing on 2 July 2015.
3. In summary the Judge found that the Respondent had failed to show that the Appellant's sponsorship at Alpha College had been withdrawn

and that the evidence the Respondent produced to support that assertion was not reliable as;

- (1) there was no indication as to who had written the file note saying it had been withdrawn [12],
- (2) there was no evidence as to how that information was communicated to the Respondent [13],
- (3) there was no evidence from the other sponsor college the Appellant is supposed to have moved to [13],
- (4) there is no name on the email of 8 August 2014 from Alpha College where it was asserted that the Appellant no longer studied [14],
- (5) there is no evidence as to why there was a delay of 3 weeks between that information being received and it being put on the Respondent's system [13 and 15],
- (6) there was no explanation as to why having received that information no action was taken to curtail the Appellant's leave [15], and
- (7) the email on which the Respondent was relying was sent less than 2 weeks before Alpha College's license was suspended, such were the Respondent's concerns about Alpha College.

#### The grant of permission

4. First-tier Tribunal Judge Andrew granted permission to appeal (5 January 2016) on the grounds that it is arguable that "the Judge has applied the incorrect standard of proof to the documents..."

#### Respondent's position

5. The grounds state that the Judge "has failed to identify the correct burden of proof. The burden of proof is the balance of probabilities."
6. It is asserted in the grounds that the Judge "had sufficient evidence before (sic) them to come to the conclusion that the A's circumstances have changed" namely an email from Alpha College dated 16 July 2014. It was therefore unclear why this evidence was unsatisfactory to conclude on the balance of probabilities that they had withdrawn their sponsorship.
7. It is further asserted in the grounds that the Judge's assessment "is based determinately upon the fact that the SSHD took three weeks to upload the information on the emails to the SSHD's database". This should not be determinative. A holistic assessment of her circumstances was required.
8. Mr Avery conceded that the word "should" which was referred to by the Judge in her determination at [4], [5], [11], and twice at [17] means "probably". He also conceded that the Judge gave other reasons at [13], [14], [15] and [16] for placing little weight on the problematic email from Alpha College.

### Appellant's position

9. There was no rule 24 notice. Having heard from Mr Avery I indicated that I did not need to hear from Miss Dogra as there was plainly no merit whatsoever in the application for the following reasons which I gave at the hearing.

### Discussion

10. There is no merit in ground 1 at [5] above. The burden of proof is not "the balance of probabilities." The standard of proof is the balance of probabilities and the burden on proof (in this case) is on the Respondent. The Judge stated (my underlining) at [4] that "the burden of proof lies on the Respondent to show that her leave should have been cancelled". The Judge also uses "should" in that same context at [5], [11], and twice in [17], namely when referring to the standard of proof that was needed to be established. "Should" in normal English usage, and as explained in the Oxford English Dictionary, means probably, or more likely than not. It is a non legal way of saying "the balance of probabilities". The Judge has used language that the lay Appellant understands and applied the correct standard of proof.
11. There is no merit in ground 2 at [6] above. The Judge gave multiple reasons which I have referred to at [3] above explaining why the email from Alpha College was inadequate. The fact that the Respondent may not agree with the Judge does not mean that the Judge gave inadequate reasons. The Judge's reasons were plainly open to her on the evidence presented.
12. There is no merit in ground 3 at [7] above. The Judge gave multiple reasons which I have referred to at [3] above explaining why the email from Alpha College was inadequate. It was not just based on a delay in uploading information.
13. I am therefore satisfied that the Judge made no material error of law.

### Decision:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Signed:  
Deputy Upper Tribunal Judge Saffer  
23 February 2016