

Upper Tribunal

(Immigration and Asylum Chamber) Appeal Numbers: IA/35284/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 26 January 2016

Decision & Reasons Promulgated  
On 18 April 2016

Before

MR C M G OCKELTON, VICE PRESIDENT  
UPPER TRIBUNAL JUDGE DAWSON

Between

HARDEEP SINGH

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Mahotre, instructed by M&S Solicitors

For the Respondent: Mr E Tufan, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of India born 12 October 1990. On 16 September 2015 he was granted permission to appeal the decision of First-tier Tribunal Judge N Dickson, who for reasons given in his decision dated 5 April 2015, dismissed the appeal against the Secretary of State's decision dated 27 August 2014 refusing to grant further leave to remain.
2. Entry clearance had been granted to the appellant as a Tier-4 student on 15 February 2011 to expire 21 June 2014. It is his case that he made an in time application on the expiry date for further leave to remain. The Secretary of State however contended that the application was not made until 24 June and thus not giving rise to a right of appeal as the refusal did not result in the appellant no longer having leave to enter or remain (section 82(d), Nationality, Immigration & Asylum Act 2002).
3. The appellant did not attend the hearing of his appeal on 31 March 2015. The First-tier judge considered that it was clear from the documents produced by the Presenting Officer that the appellant

had sent his application by special delivery on 24 June 2015. He also considered a statement of additional grounds dated 1 October 2014 raising article 8. For reasons given in her letter dated 3 October 2014 the Secretary of State certified the claim as clearly unfounded with reference to section 94(2) of the 2002 Act. Consequently the judge concluded that there was no valid appeal before him and, in the alternative, dismissed the appeal as the appellant had not left the United Kingdom.

4. The appellant relies on copies of emails that he submitted with his grounds of appeal to the First-tier Tribunal in support of his case in the Upper Tribunal.
5. The first email timed at 7.53pm from "*do-not-reply@homeoffice.gov.uk*" addressed to the appellant confirms that his UKVI on-line account had been set up with the user name and temporary password.
6. The next email timed at 8.50pm on 20 June 2014 is from *S hopper@worldpay.com* to *Hardeep11010@gmail.com* and indicates that any reply should be sent to *i.-apply.feedback@homeoffice.gsi.gov.uk*. The body of the email acknowledges a processing of a transaction on behalf of UK Visas and Immigration and provides, in addition, a world paid transaction ID a UKVI reference number. Any enquiries were to be directed to UK Visas and Immigration, with the indication that it was their responsibility "... to confirm that your order has been accepted, and to deliver any goods or services you have ordered."
7. The third email again from "*do-not-reply@homeoffice.gov.uk*" addressed to the appellant on the same date and also timed at 8.50pm includes this text; "you have completed your application tier-4 student "print and send" application on line".
8. The appellant subsequently sent a printed copy of his application to the Home Office. According to the Secretary of State's case information database, a special delivery letter was received on 24 June 2014. In her decision letter dated 27 August the Secretary of State treated this date as the one when the appellant made his combined application for leave to remain as a Tier-4 (general) student migrant under the points base system and for a biometric residents permit.
9. Paragraph 34(g) of the Immigration Rules provides (relevant to the issue before us):

"34(g)  
For the purposes of these rules, the date on which an application or claim (or a variation in accordance with paragraph 34(E) is made up as follows:  
(i) ...  
(ii) ...  
(iii) ...  
(iv) Where the application is made by the online application process, on the date on which the on-line application is submitted."
10. The evidence submitted with the notice of appeal was sufficient to persuade the Duty Judge that the application for further leave to remain had been made before expiry of the leave on which the appellant had entered the United Kingdom. He made this endorsement on the file when approving the issue of the appeal:

"Valid (proof application made before leave expired on HO on-line portal has been filed)"

11. He also gave the following instruction:

"Hardeep Singh

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Please copy the gmail docs and send to Chris Weeks, removal case work team 14, Sheffield for his/her views. If nothing is received from him/her within five days this appeal will proceed to a hearing.

NMK Lawrence, Duty Judge, 28 October 2014"

12. It is not evidently clear from the decision of First-tier Tribunal Judge Dickson what view he took of the emails, if any, even though they were before him.

13. Mr Tufan accepted that the Secretary of State's guidance relating to online applications reflected the position as stated in the third email above. By this we understand that online applications were regarded as having been made when submitted online. Accordingly we expressed the provisional view at the hearing that a valid in-time application had been made by the appellant based on the material that he had provided to the First-tier Tribunal and he was entitled to a right of appeal. Our view was contingent upon Mr Tufan checking the position and responding; he did so in an email dated 27 January 2016 in these terms:

"Further to your directions given in court yesterday I have now perused the file and confirm that there is no further information to rebut the panels finding that the appellant's on-line application made on 20 June 2014 was made in time."

14. Accordingly, we set aside the decision of the First-tier Tribunal Judge and remit the case for reconsideration by a differently constituted tribunal. In doing so we express no view on the merits; that is a matter for the First-tier Tribunal.

Signed Date 14 April 2016

Upper Tribunal Judge Dawson