



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/34787/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 4<sup>th</sup> December, 2017  
dictated 4<sup>th</sup> December, 2017

Decision & Reasons Promulgated  
On 15<sup>th</sup> January, 2018

Before

Upper Tribunal Judge Chalkley

Between

PARMINDER KUMAR  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

*For the Appellant: In Person*

*For the Respondent: Mr T Wilding, Home Office Presenting Officer*

**DECISION AND REASONS**

1. The appellant is a citizen of India born on 20<sup>th</sup> June 1991. He appealed against the decision of the respondent taken on 29<sup>th</sup> July 2015 to refuse his application to vary his leave to remain in the United Kingdom outside the Immigration Rules made on 15<sup>th</sup> January, 2015. The appellant was granted leave to remain as a Tier 4 (General) Student from 20<sup>th</sup> March 2015, but that leave was curtailed on 27<sup>th</sup> February 2014 because the appellant's Tier 4 sponsor had stopped sponsoring him because the

appellant had finished his course early and this resulted in a new visa expiry date of 28<sup>th</sup> April, 2014.

2. The respondent noted that the appellant was now seeking to vary leave to remain outside the Immigration Rules in order to secure a new CAS letter, but had been unable to do so and was applying for further leave to remain in order to resolve the situation.
3. The appellant appealed to the First-tier Tribunal and his appeal was heard by First-tier Tribunal Judge Herlihy on 9<sup>th</sup> March 2017. The Immigration Appeal Tribunal file shows that the appellant originally lodged an application on 7<sup>th</sup> December 2015 without a fee. An application for a Lord Chancellor's Certificate of Fee Satisfaction was applied for and refused. The Tribunal notified the appellant that a fee of £140 was required by 12<sup>th</sup> January 2016. On 21<sup>st</sup> January 2016 the Tribunal wrote to the appellant advising him that the Lord Chancellor had revoked his Certificate for Fee Satisfaction and the appeal had been struck out. The appellant wrote a letter from [ ] Hayes, Middlesex to the Courts and Tribunal Services explaining that he had not received letters from the Tribunal regarding payment for a fee and had previously been let down by a solicitor. The fee was paid on line and the appellant wrote to the Tribunal on 25<sup>th</sup> January advising the Tribunal.
4. As a result, following an application for reinstatement received by the Tribunal on 25<sup>th</sup> January 2016, the Tribunal accepted the reinstatement and gave notification of reinstatement to the appellant at his home address on 12<sup>th</sup> February 2016. On 14<sup>th</sup> February 2016, the Tribunal wrote giving the appellant notice of the time, date and place fixed for the hearing of the appeal on Thursday 9<sup>th</sup> March 2017, at 10am at Taylor House, 88 Rosebery Avenue, London EC1. That was sent to the appellant by second class post to him at his address at [ ] Hayes on 14<sup>th</sup> October 2016.
5. When the matter came for hearing before Judge Herlihy there was no appearance by or on behalf of the appellant at 11.30am and she proceeded to hear the appeal in his absence. In fact, no explanation had been offered for the appellant's non-attendance.
6. The judge noted that the respondent refused the application under paragraph 322(1) of the Statement of Changes in Immigration Rules HC 395 (as amended), because the appellant was applying for leave for a purpose not covered by the Immigration Rules and paragraph 322(1) is a mandatory ground of refusal. The judge noted that the appellant had submitted no evidence in support of the appeal and had not set out any grounds in the Notice of Appeal. Being unable to discharge the burden of proof on him to the standard required, the judge found that the decision of the respondent was in accordance with the law. The judge dismissed the appeal.
7. The appellant sought and was granted permission to appeal, claiming that he did not receive any Notice of Hearing and was waiting for it and would have attended the hearing had he received it. Today he has offered no explanation as to why that letter should not have been received by him, given that earlier letters were, and he has

confirmed that he lives at the same address. His application was for a purpose outside the Immigration Rules and it, therefore, fell to be mandatorily refused under paragraph 322(1) by the respondent. The judge dismissed the appellant's appeal believing there were no grounds for thinking that the Secretary of State's decision was wrong.

8. Mr Wilding submitted to me that the appeal was in any event doomed to fail. The appellant claims not to have received notice of the hearing, but given that he was in correspondence with the Tribunal in 2006 concerning the payment of a fee with his original Notice of Appeal and given that he was subsequently told that the appeal was reinstated, it is surprising that he took no steps to enquire of the Tribunal when his appeal was to be heard. However, even if I were to find that because of a failure to give him Notice of Appeal because, for example, the Notice of Appeal was delivered to the wrong address, or lost by the Post Office, the fact of the matter is that he cannot possibly succeed in this appeal which can only be dismissed.
9. The Appellant has been given every opportunity today to adduce whatever evidence he wished and it has been explained to him that since he applied for permission to remain in the United Kingdom outside the Rules, in other words, for a purpose not covered by the Immigration Rules, his application had to be dismissed by the Secretary of State. The Secretary of State's decision in dismissing that application was not wrong.
10. I have concluded that even if because of an administrative error the appellant was denied the opportunity of presenting an appeal to the judge, he has however been given every opportunity today to present an appeal to me, but the fact remains that his appeal is doomed. It cannot succeed. The appellant's appeal is dismissed.

### **Notice of Decision**

The appeal is dismissed.

No anonymity direction is made.

*Richard Chalkley*

Upper Tribunal Judge Chalkley

Date 12.01.2018