



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

Appeal Number: IA/00131/2018

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 28 March 2019**

**Decision & Reasons  
Promulgated  
On 3 April 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHAERF**

**Between**

**SELVA KUMAR BOOMINATHAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Mr L Tarlow of the Specialist Appeals Team

**ERROR OF LAW DECISION AND REASONS**

**The Appellant**

1. The Appellant, Selva Kumar Boominathan, is a citizen of India born on 24 December 1988. He is single and has no dependants. On 19 October 2009 he entered with leave as a Tier 4 (General) student which was later extended to expire on 5 September 2013. On 3 September 2013 he applied for further leave in the same capacity.

### **The SSHD's Original Decision**

2. On 4 July 2018, almost five years after the application had been made, the SSHD refused it on the ground that the Certificate of Approval for Study (CAS) upon which the Appellant relied had been assigned to a different person and consequently he did not meet the relevant requirements of Appendix A of the Immigration Rules. The Respondent did not go on to consider whether the Appellant met any of the other requirements for further leave as a student.
3. The Appellant lodged an appeal and requested an oral hearing. There was an issue about payment of fees which was ultimately resolved.

### **Proceedings in the First-tier Tribunal**

4. By a decision promulgated on 26 October 2018 Judge of the First-tier Tribunal Alis on the basis of the papers in the Tribunal file found that although a copy of the grounds of appeal had been requested by the Tribunal on 20 August 2018, the Appellant had failed to file them by 25 October 2018. Accordingly, he found the Appellant to be in breach of the relevant Procedure Rules and proceeded to determine the appeal on the basis of the papers in the Tribunal file. He noted the Appellant had failed to provide any hint of the reason for the appeal and so dismissed it.
5. The Appellant sought permission to appeal. The grounds assert the CAS was issued to the Appellant by Quinton College Ltd and he had no knowledge of it being assigned to anyone else. The SSHD had failed to prove the assertion that the CAS was not issued to him. The SSHD's delay in dealing with the application resulted in significant detriment to the Appellant. Further, the Appellant stated he had not received the request of 20 August 2018 from the Tribunal to file grounds of appeal and so the dismissal of his appeal was procedurally unfair.
6. On 12 November 2018 Judge of the First-tier Tribunal Nightingale refused permission to appeal noting that the Appellant had been sent the request to file grounds of appeal by both e-mail and post.

### **Proceedings in the Upper Tribunal**

7. The Appellant renewed to the Upper Tribunal his permission application on the same grounds. On 14 December 2018 Deputy Upper Tribunal Judge Davidge granted permission because the dispatch and receipt of the 20 August request for grounds for appeal was questionable in the light of the difficulties previously experienced in relation to the payment of fees to the Tribunal.
8. On 18 March 2019 the Appellant sought an adjournment of the hearing set for 28 March on the basis of a letter from his GP stating he was unable to attend Court due to stress and lack of sleep following injuries sustained in a road traffic accident. In support of the application he enclosed a copy of an assessment of 27 December 2018 by an individual described simply as

a “therapist” stating that the Appellant would be able to return to work or education within 2-3 weeks and that any appropriate treatments would be completed by the end of February 2019.

9. The request for an adjournment was refused on 26 March by Upper Tribunal Judge Lindsley.
10. The Appellant appeared in person accompanied by a friend who did not take part in the proceedings. I explained the purpose and procedure to be adopted at an Error of Law hearing. The Appellant confirmed his address.
11. I noted that the Tribunal file did in fact include grounds of appeal lodged by the Appellant and the indication was that they had been filed at the Tribunal well before 25 October 2018. In the circumstances, I considered that the decision of the First-tier Tribunal contained an error of law because it had not addressed the grounds for appeal and the Appellant had been denied the opportunity to present his case. Mr Tarlow for the SSHD quite properly took no objection.
12. I indicated I was ready to proceed with a hearing of the substantive appeal. The Appellant sought an adjournment on the basis that he was not ready to proceed to a substantive hearing. I said that having regard to the delay, the appeal should be decided as soon as practicable and I intended to retain it in the Upper Tribunal.
13. I have now reached the conclusion that it would be procedurally unfair to the Appellant for the substantive appeal to be heard, effectively for the first time, in the Upper Tribunal. He had requested and paid for a hearing in the First-tier Tribunal which, as explained, has not taken place.
14. In the circumstances described, I think the better course is to set aside in its entirety the decision of the First-tier Tribunal for procedural unfairness and direct the appeal be heard substantively at an early date in the First-tier Tribunal.

### **Anonymity**

15. No anonymity direction has been requested and having considered the nature of the appeal, I find none is warranted.

### **Directions**

16. For the re-hearing in addition to any directions which the First-tier Tribunal may make: I direct that not less than 10 days before the next hearing date:

The Appellant do file and serve documentary evidence to show what he has been doing between the date of his application and the date of the SSHD’s decision and if he cannot show he continued in education, what enquiries he had made of Quinton College and its responses and why he did not continue in education.

The SSHD do file and serve an explanation for the delay in reaching the decision under appeal.

**SUMMARY OF DECISION**

**The decision of the First-tier Tribunal is set aside.**

**The appeal is remitted to the First-tier Tribunal for hearing afresh with no findings of fact preserved.**

**No anonymity direction.**

**Directions: see paragraph 16.**

Signed/Official Crest

Date 29. 03. 2019

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal