Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/05013/2013

THE IMMIGRATION ACTS

Heard at:	**Field House**	**Determination Promulgated**	
On:	**9 July 2013**	**On:**	**25 July 2013**

Before

UPPER TRIBUNAL JUDGE GRUBB
DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

MUHAMMAD ASAD MAJEED

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Nagra, SHN Solicitors
For the Respondent: Ms E Martin, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Pakistan born on 15 March 1986. He appeals against a decision of the First-tier Tribunal (Judge Pacey) dismissing his appeal as being invalid against the

Respondent's decision to refuse leave to remain as a Tier 1 (Post-study work) Migrant. The Respondent's decision was made on 25 September 2012 by reference to Appendices A and B of the Immigration Rules (HC395). In making this decision the Respondent asserted that the Appellant had no right of appeal because at the time the application was made the Appellant did not have extant leave to remain.

2. The basic details of the Appellant's immigration history are not in dispute. He arrived in the United Kingdom as a student in March 2006 and was granted successive extensions of leave to remain eventually expiring on 14 January 2013. The Appellant made the application under appeal on 4 April 2012. However the Respondent had purported to curtail the Appellant's leave to remain on 6 March 2012. The Appellant denied having received notice of this curtailment and the issue before the First-tier Tribunal Judge was primarily whether there had been an effective curtailment. The Judge heard evidence and, finding that there had been an effective curtailment, concluded that there was no right of appeal and purported to dismiss the appeal as invalid.

3. In his grounds of appeal to the Upper Tribunal the Appellant asserts that the First-tier Tribunal Judge erred by failing to take into account relevant facts in concluding that there had been an effective curtailment in particular by not requiring or indeed enquiring about proof of delivery of the curtailment letter. It is asserted that by failing to do so the Judge misapplied the burden of proof in that the burden of proving that effective delivery, and therefore effective curtailment, was on the Respondent. Permission to appeal was refused by the First-tier Tribunal but on renewal to the Upper Tribunal permission was granted on the basis that it may have been unclear whether regulation 7(1)(c) of the Immigration (Notices) Regulations 2003 had been complied with by the Respondent. By a rule 24 response the Respondent argues that the First-tier Tribunal Judge directed herself appropriately, notes that the question of recorded delivery was not raised in the grounds of appeal and submits an extract from the Respondent's computer record system showing that the curtailment decision was served by recorded delivery.

4. In submissions before us Mr Nagra on behalf of the Appellant referred to his written skeleton argument. He said that the curtailment decision was in fact handed to the Appellant at the First-tier Tribunal hearing and that this was the first time he had seen it. If the Appellant had received the curtailment decision he would have appealed it. The Appellant's former landlord has provided a statement to the effect that he never

received any curtailment letter on behalf of the Appellant. The extract from the Respondent's computer record now produced is insufficient to show that the notice of curtailment was sent by recorded delivery.

5. For the Respondent Ms Martin referred to the rule 24 response and the extract from the Respondent's records. The recorded delivery number is clearly shown along with the address to which it was sent.

6. We reserved our decision.

DISCUSSION

7. The issue that was determined by the First-tier Tribunal Judge was whether the curtailment decision of 6 March 2012 had been effectively served upon the Appellant. After hearing evidence from the Appellant and submissions from his representative she found that the curtailment decision had been properly served. In making this finding the Judge made various assessments of the credibility of the Appellant. She found that the Appellant's explanation that the college at which he was studying had informed the Home Office of his change of address was not credible (paragraph 6). She did not find it credible that the Appellant met his former landlord in the street two or three days after a Home office enforcement visit (paragraph 8). She did not find it credible that the Appellant did not give his forwarding address to his former landlord (paragraph 9). She did not accept that the Respondent was notified in July 2011 of the Appellant's change of address (paragraph 11). All of these credibility findings were open to the First-tier Tribunal and the making of these credibility findings discloses no error of law.

8. An examination of the facts shows that the Appellant's address at the time he obtained his leave to remain on 19 July 2010 was 22 Cromwell Road. The First-tier Tribunal found that this was the address that the Respondent had on file for the Appellant at the date of the decision to curtail. It was at that time the last address provided by the Appellant. We take note of the fact that the application made by the Appellant and acknowledged by the Respondent shows his address as 20 Nelson Street but this application was not made until 4 April 2012 four weeks after the curtailment decision.

9. The First-tier Tribunal having found that the Appellant had not notified the Respondent of a change of address by the time of the curtailment decision the only question remaining is whether

the curtailment notice was properly served in accordance with the Immigration (Notices) Regulations 2003. The First-tier Tribunal Judge did not consider method of service but to the extent that such failure may have been an error of law that error could not in our judgement be material because the respondent has now submitted compelling evidence by way of a contemporaneous minute and the recorded delivery number to show that the curtailment notice was served by recorded delivery at the Appellant's last known address on 6 March 2012.

10. In our judgement the grounds of appeal as clarified by Mr Nagra's submissions do not disclose any error of law that could be considered material to the decision of the First-tier Tribunal. In reaching this conclusion we are mindful of the Upper Tribunal authority of Green (Article 8 – new rules) [2013] UKUT 00254 (IAC) at paragraph 41

> The existence of an error of law is a necessary condition to setting aside a panel decision but not a sufficient one (see Tribunals Courts and Enforcement Act 2007 s.12 (2) (a)). Where any error is not material to the outcome the Upper Tribunal will not normally set aside the decision below and remake it.

Conclusion

11. The only arguable error of law was the failure to consider whether the curtailment notice had been properly served in accordance with regulation 7(1)(c) of the Immigration (Notices) Regulations 2003. We do not consider any such failure to be material or capable of having any effect on the conclusions for the reasons we have given in paragraph 9 above.

12. Consequently this appeal does not succeed. There was no valid appeal before the First-tier Tribunal.

J F W Phillips
Deputy Judge of the Upper Tribunal Date: