



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/23557/2012

**THE IMMIGRATION ACTS**

Heard at Field House, London  
On 7<sup>th</sup> August 2013

Determination Promulgated  
On 20<sup>th</sup> August 2013  
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Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

MR FARAD SAID ULLAH  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: No representative, Appellant did not attend  
For the Respondent: Ms Ong, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is an appeal against a determination of a First-tier Tribunal Judge (Trotter) promulgated on 14<sup>th</sup> March 2013, following a hearing on the papers.

2. The Appellant had appealed against the Respondent's decision of 12<sup>th</sup> October 2012, refusing to vary his leave to enter the United Kingdom as a student under the Points Based System and to remove him by way of direction under Section 47 of the Immigration Asylum and Nationality Act 2006.
3. The Respondent had refused the Appellant's application because the Appellant did not score 30 points on his CAS on account of the fact that although there was an English Language Test Certificate provided it did not include the score for writing with the rest of the TOEIC certificate. The Judge who considered the matter dismissed the Appellant's appeal under the Immigration Rules. So far as the Section 47 matter was concerned the Judge found that the Respondent had not acted in accordance with the law and suffice to say that that matter stands.
4. The Appellant sought permission to appeal and First-tier Tribunal Judge Mailer granted permission in the following terms.

*"The Judge noted that but for the 'regrettable error' in failing to deliver the document which was in his possession at all material times he would have had his extension...*

*...It does not appear that the respondent applied the flexibility policy as described in Rodriguez [2013] UKUT 00042 in force at the time. It may be arguable that the Appellant should have been given the opportunity to provide the missing score. That may arguably amount to an error of law".*

Thus the matter comes before me to determine whether the First-tier Tribunal Judge's determination contains an error of law, requiring it to be set aside and the decision remade.

5. At the hearing before me the Appellant did not attend; nor was he represented. I was satisfied that he had been served with notice of the hearing at his last known address and thus I was entitled to proceed in his absence. Ms Ong appeared for the Respondent.
6. At the outset of the proceedings Ms Ong conceded that she was satisfied that the First-tier Tribunal Judge had erred in law, because he had not even considered the flexibility policy described in **Rodriguez**. She submitted that that would amount to an error of law and asked that the decision be set aside and that the matter proceed to a resumed hearing.

### **Error of Law**

7. I am satisfied that the decision of First-tier Tribunal Judge Trotter contains an error of law, for the reasons set out above by Ms Ong. I announced my decision in court and announced that I would continue with the resumed hearing.

### **Resumed Hearing**

8. Ms Ong made submissions before me. She asked that I dismiss the appeal. She directed me to the case of **Rodriguez** and to the Respondent's policy document in force at the date of decision.
9. She said that the facts are not in dispute in this appeal. The Appellant though his own conduct, failed to provide the score for the writing part of the English Language Test Certificate. There was no information or evidence to lead the Respondent to believe that the score for the writing part existed. In these circumstances the decision to refuse was correct and the appeal should be dismissed.

### **My Findings**

10. Although this may appear a harsh decision, since the relevant missing document was in existence at the date of decision, I find that the Appellant did not provide the necessary document to ensure that he received the extension of leave he requested. That is solely down to his conduct.
11. I find that there is nothing in the documentation provided, which could be said to be sufficient to alert the Respondent to the fact that the missing certificate was in existence, and thereby make a request for the Appellant to provide it.
12. I am satisfied and I find, that the Appellant cannot take advantage of the Respondent's evidential flexibility policy as outlined in **Rodriguez**.
13. No Article 8 arguments were advanced before me.

### **DECISION**

14. The decision of the First-tier Tribunal Judge contained an error of law and is hereby set aside. This appeal is dismissed.
15. Appeal dismissed.

No anonymity direction is made

**Signature**  
Judge of the Upper Tribunal

**Dated**

### **Fee Award**

I have dismissed the appeal and therefore there can be no fee award.

**Signature**

**Dated**