Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/01515/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 26 August 2014	**On 28 August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS

Between

MISS HETALBEN HARSHADBHAI PATEL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Layne, Counsel
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

The History of the Appeal

1. The Appellant, Miss Hetalben Harshadbhai Patel, is a citizen of India.

2. On 4 September 2009 the Appellant was granted leave to enter the UK as a Tier 4 (General) Student until 30 July 2011. Her leave was extended on 27 May 2011 until 27 July 2014.

3. On 16 July 2013 the Respondent sent the Appellant a letter, addressed to her at the address which she had notified and where she was living. It stated that the licence of Hendon Business School, in respect of which she had submitted a Confirmation of Acceptance for Studies (CAS) for a Diploma in Management, had been revoked; her CAS was therefore no longer valid; and her application would be suspended for 60 days to enable her to submit a fresh application or to leave the UK. Both representatives submit that this letter curtailed her leave to remain in the UK. It does not however say this. The letter was sent by recorded delivery. The Track and Trace system of Royal Mail shows it to have been signed for "S.H.P.0940.Santa."

4. The evidence of the Appellant before the judge was that she did not receive this letter; there was nobody called Santa living at the property where she lived; and three other people lived there, and each said that they had not received or signed for the letter.

5. On 9 December 2013 the Respondent refused the Appellant's application for leave to remain in the UK as a Tier 4 (General) Student Migrant and made a decision to remove her from the UK under Section 47 of the 2006 Act. The decision was on the basis that Hendon Business School was not listed as a Tier 4 Sponsor on either 16 July or 9 December 2013; the Appellant had not submitted a new CAS within the 60 day period which had been allowed to her on 16 July 2013; and she could therefore not show either a CAS or adequate maintenance (funds).

6. The Appellant's ensuing appeal was heard by Judge Adio sitting at Hatton Cross on 8 May 2014. The Appellant appeared in person; the Respondent was represented. In a determination promulgated on 27 May 2014 the judge dismissed the appeal under the Immigration Rules and on human rights grounds.

7. The Appellant sought permission to appeal, which was granted on 24 June 2014 by Judge Colyer, as subsequently supplemented by procedural directions, in the following terms:

> "1. The Appellant seeks permission to appeal against a decision of the First-tier Tribunal (Judge Adio) who, in a determination promulgated on 27th May 2014 dismissed the Appellant's appeal against the Respondent's decision to curtail the Appellant's leave to remain in the United Kingdom as a Tier 4 (General) Student under the immigration rules and to remove her by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The Appellant's Grounds and reasons for permission to Appeal to the upper tribunal in summary were that:

   a. The judge has materially erred in law by finding that the Appellant had received the curtailment letter (whereas it is submitted that the recorded delivery signature "Santa" did not match anyone who lived at the Appellant's address).

   b. The Secretary of State has to be able to prove that notice of such a decision was communicated to the person concerned in order to be effective. The Secretary of State cannot rely upon deemed postal service.

   c. The judge erred by finding that the Appellant already mentioned that since September/October 2013 A has tried her best to get admission from other colleges but they confirmed that without the curtailment letter they were unable to issue a new CAS. When she requested from the Home Office they informed her to wait for letters which they never do till refusal.

3. Permission to appeal can only be granted if I am satisfied that there was a material error of law that would have made a material difference to the outcome of the original appeal. This could be due to adverse or irrational findings or a lack of findings on core issues as established in the case of R (Iran etc) v SSHD [2005] EWCA Civ 982. I have read the determination carefully to see if it contains any obvious errors of law.

4. When considering the determination it is arguable that the judge has made a material error of law in the determination in respect in finding that the Appellant's leave to remain had been validly terminated by the service by recorded delivery on "SANTA" which the Appellant stated she had not received. Therefore if the Appellant's leave had not been terminated by proper notice the decision to remove her from the United Kingdom would be unlawful."

8. The Appellant attended the error of law hearing before me, which took the form of submissions, which I have taken into account, together with the permission application. I reserved my determination.

Determination

9. The facts of the matter are not in dispute. The issue is whether as a matter of law the Appellant is to be treated as having received the Respondent's letter of 16 July 2013 giving her 60 days to attempt to find a new college and a new CAS and purportedly curtailing her leave.

10. In **Syed (curtailment of leave – notice)** [2013] UKUT 00144 (IAC) the appellant was twice served by recorded delivery with a notice of curtailment of leave, and the notices were twice returned. The issue was whether he was to be deemed to have been served. The head note to the case reads:

> "1. The Immigration (Notices) Regulations 2003 do not apply to a decision under the Immigration Act 1971, which is not an immigration decision within the meaning of section 82 of the Nationality, Immigration and Asylum Act 2002.
>
> 2. There is no statutory instrument under the 1971 Act dealing with the means of giving notice for the purposes of section 4(1) of a decision under that Act, which is not an immigration decision.
>
> 3. Accordingly, the Secretary of State has to be able to prove that notice of such a decision was communicated to the person concerned, in order for it to be effective. Communication will be effective if made to a person authorised to receive it on that person's behalf: see Hosier v Goodall [1962] 1 All E.R. 30; but the Secretary of State cannot rely upon deemed postal service."

11. At paragraph 28 Upper Tribunal Judge Spencer stated:

> "In the absence of an order made by statutory instrument under section 4(1) of the Immigration Act 1971 dealing with the giving of notice of variation of leave where there is no right of appeal, the Secretary of State has to be able to prove that notice of a decision varying leave to remain under section 3(3)(a) of the Immigration Act 1971 where there is no right of appeal was communicated to the person concerned for it to be effective. Where there is no 'immigration decision' the Immigration (Notices) Regulations 2003 do not apply. Communication would be effective if made to a person authorised to receive it on that person's behalf, see Hosier v Goodall [1962] 1 All E.R. 30, but the Secretary of State cannot rely upon deemed postal service."

12. **Hosier v Goodall** [1962] 1 All E.R. 30, relating to a notice of prosecution, held at page 32 C/D:

> "I am quite satisfied that ever since *Ex p. Rossi* (5), the question of reasonableness does not enter into the matter at all. It is not a question whether the police were reasonable in sending the notice to this, that or the other address, but whether it has been shown that a notice wherever sent has been received. In other words, if the police choose to send the notice to the defendant's home address they take the risk that there is no one there, that the letter is returned, or that if there is somebody there it is a person who has no authority to receive it. They take the risk of matters of that sort, but if they do send,

whether reasonably or unreasonably, a notice to the home address and it is taken in by a person authorised not merely to sign for it, but to receive it and deal with it, it has in fact been received by the defendant."

13. In **Hosier v Goodall** the notice of intended prosecution was received by the defendant's wife, who did not show it to him in hospital. It was held that because she was to be taken to have been authorised to receive and deal with it, he should be treated as having received it. In the present case the evidence is that, although the Respondent's letter was received and signed for by "Santa", that person was not authorised to receive and deal with it on behalf of the Appellant.

14. There is inevitable harshness for the Respondent if a notice which was given and signed for is not treated as having been received by the Appellant, and for the Appellant if she is to be treated as having received an important notice which, according to her unchallenged evidence, she did not. **Syed** determines the issue in her favour. In finding at paragraph 9 that the Appellant is to be treated as having received the letter affording her this 60 day opportunity, the judge fell into legal error. His determination must be set aside.

15. Mr Layne invited me to allow the appeal. Mr Wilding submitted that the issue of service would determine the appeal. It does, but the issue is with what consequence. The Refusal Letter of 9 December 2013 is based upon the Appellant not having taken the opportunity to submit a new CAS within 60 days. The Appellant did not know that she was entitled to do so. Indeed, according to her statement she was disappointed not to have been given any opportunity to submit a new CAS and pursued the Home Office in October 2013 for a response. The only just and appropriate outcome is for her now to be afforded that 60 day opportunity.

26. The appeal is accordingly allowed to the extent that, within 60 days of the date of deemed receipt of this determination, the Appellant is entitled to submit a new application accompanied by a new CAS. The Respondent is to make a decision in the light of whether or not she does so.

Decision

27. The original determination contained an error of law and is set aside.

28. The appeal is allowed with the consequences set out in paragraph 26 above.

Signed Dated: 27 August 2014

Deputy Upper Tribunal Judge J M Lewis