



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

Appeal Number: IA/03011/2014

THE IMMIGRATION ACTS

Heard at Field House

On 18 July 2014

Determination

Promulgated

23 October 2014

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PREMNATH GANESHPILLAI

Respondent

Representation:

For the Appellant: Ms Lorna Kenny, Senior Home Office Presenting Officer

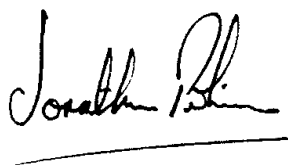
For the Respondent: In Person

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter "the claimant", against a decision of the Secretary of State refusing to extend his leave to remain in the United Kingdom as a student. The claimant has appeared before me in person and I record that he has conducted himself courteously and helpfully and has used the English language competently. I am satisfied he has understood what is being said and was able to explain his case.
2. The papers show that he was in the United Kingdom with permission and his leave expired on 18 November 2013. On the same day he made an application for further leave to remain as a student but it was an application that could not possibly succeed. It could not succeed because it was not supported by a form CAS (Confirmation of Acceptance for Studies) and he could not obtain the form CAS because he had not passed the necessary English language tests. I know this because the claimant explained it to me in a commendably forthright way.

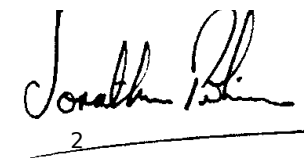
3. He thought that he could make a sort of deferred application which would be acceptable provided he made it in time and produced the necessary evidence later, which he appears to have done, but if that is what he thought he was wrong. The Rules are extremely clear and they require the documents identified to be produced with the application. There are some circumstances which only occur rarely where the evidential flexibility policy has to be considered but this is manifestly not such a case. Rather, this is a case of an applicant who just did not satisfy the requirements of the Rules.
4. The appeal was allowed by the First-tier Tribunal Judge. I have to say with respect for the First-tier Tribunal Judge it is very hard indeed to understand the reasons behind allowing the decision. The judge directed himself correctly but he had to look at what the appellant had proved at the date of application and noted that the form CAS post-dated the application. The application was made in November and the form was dated in January 2014. The position seemed hopeless.
5. The First-tier Tribunal Judge decided that there was some sort of discretion that could have been exercised. That appears to be entirely wrong. The judge then compounded the error by then presuming to exercise the discretion himself, which is simply not open to a judge except in the very rare circumstances where there is only one possible outcome, and that is something which in the nature of a discretion hardly ever occurs.
6. It follows therefore that the First-tier Tribunal Judge's decision to allow the appeal was completely wrong. I have listened to the respondent today and although I understand that from his point of view the situation is vexing and hard to understand his position is completely hopeless. The fact is he did not meet the requirements of the Rules when he made his application. The decision to allow his appeal was completely wrong and I must set aside that decision and replace it with a decision dismissing the claimant's appeal against the Secretary of State's decision.
7. I do record that there is nothing that I have seen in the claimant's conduct which is to his discredit beyond making a mistake about the operation of the Immigration Rules, and that is something which should be borne in mind in the event of his returning to Sri Lanka and making a further application of some kind on a future occasion but that is entirely a matter for him.
8. It follows therefore that I allow the Secretary of State's appeal and substitute the decision dismissing the claimant's appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Jonathan Perkins

Dated 22 October 2014



Jonathan Perkins

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