



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

Appeal Number: IA/12701/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 29 July 2014  
Delivered Orally**

**Determination  
Promulgated**

**On 6 August 2014**

**Before**

**THE HON. MR JUSTICE LEWIS  
SITTING AS A JUDGE OF THE UPPER TRIBUNAL  
UPPER TRIBUNAL JUDGE GOLDSTEIN**

**Between**

**MISS SHANIKA DILRUKSHI LIYANAGE DON**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: The Appellant appeared in person

For the Respondent: Mr T Wilding, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is an appeal by the Appellant, a citizen of Sri Lanka, born on 28 September 1983 against the decision of the First-tier Tribunal who in a determination promulgated on 30 May 2014 and decided upon the papers, dismissed the appeal of the Appellant against the decision of the Respondent dated 5 March 2014 to curtail her leave as a Tier 4 Student. The basis of the refusal as set out in the letter of refusal of 5 March 2014

was this: that she had been granted leave to enter as a Tier 4 (General) Student until 1 February 2015 in order to undertake a course of study at Bell's College but the Home Office were informed by the college on 23 January 2014 that she had in fact failed to commence studying with them. Therefore her leave was curtailed under the provisions of paragraph 323A(a)(ii)(1) of the Immigration Rules with immediate effect. Further, a decision was made to remove her from the United Kingdom by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006 (as amended).

2. For reasons that will shortly become apparent, and as Mr Wilding did not object, it is not necessary for us to go into any particular detail as to the basis upon which the First-tier Tribunal Judge, on the evidence before him, decided that the appeal must be dismissed. It will suffice to say that the only evidence of attendance that was before the Judge was an attendance record that showed that between 24 January 2014 and 28 February 2014 the Appellant had attended thirteen out of sixteen sessions.
3. Permission to appeal was granted by First-tier Tribunal Judge Gibb and in granting permission he noted amongst other things, that the sole basis upon which the appeal failed and indeed the decision to curtail her leave was made, was simply because of the non-attendance report made by the college in the first instance.
4. Thus the appeal came before us on 29 July 2014 when our first task was to decide whether or not the determination of the First-tier Judge disclosed an error or errors on a point of law such as may have materially affected the outcome of the appeal.
5. It was the evidence of the Appellant who represented herself, that when she received the Letter of Refusal from the Home Office it was accompanied by an appropriate form that it was open to her to complete if she sought to appeal that decision. She noted that at the top right hand corner of the form there appeared a box ticked to confirm that the matter would be decided on the papers. Further, the Appellant's name was already entered. Both entries were in the same typeface. The Appellant having decided to appeal, proceeded in her longhand to complete the rest of the form, for this purpose
6. The Appellant told us that whilst she had noticed that there was an option to tick the box requesting an oral hearing she thought, not being a lawyer or understanding these matters, that because the box for a paper hearing had already been ticked, that this was the only way in which her appeal could proceed. Had she appreciated that she could have had an oral hearing then she would have undoubtedly sought it.
7. Indeed, since the appeal was lodged and prior to the hearing of this appeal before us, the Tribunal received from the Appellant with her letter

of 30 June 2014 a bundle of documents that in fact included the record of attendance of the Appellant at the college from the outset of her course.

8. The Appellant explained that she had mistakenly thought that she only needed to provide to the First-tier Tribunal evidence from 24 January 2014. She readily accepted before us, that this was clearly a mistake.
9. The concern that the Appellant's evidence raised with us, was whether in these circumstances there had been procedural unfairness due to the fact that the Appellant was thus denied or albeit inadvertently misled, into believing that she could not take the opportunity of electing to have an oral hearing in which she could have given oral evidence in support of her own appeal and indeed at the oral hearing, produce all of the documents that are now before us. Clearly, had the First-tier Judge seen the record of attendance that is now before us and had he considered that it was cogent evidence in support of the Appellant's case that she did not fail to attend her course, he may well have come to a different decision.
10. We were thus concerned that that there had in consequence, been a procedural irregularity which has led to an unfair hearing recognising that justice must not only be done but seen to be done.
11. Most helpfully, Mr Wilding for the Respondent accepted that in such circumstances the appropriate course would be to set the decision of the First-tier Judge aside and to make a fresh decision.
12. Upon our careful consideration of the matter, we concluded for the above reasons that the appropriate course was to set aside the decision of the First-tier Tribunal. We considered whether to remit this appeal to the First-tier Tribunal but having ascertained that a remitted hearing of this appeal could take many months, we decided with Mr Wilding's and the Appellant's agreement, that fairness demanded that we should ourselves proceed to make that fresh decision. We therefore proceeded to consider the evidence that was now before us in its totality.
13. Having seen and heard the Appellant's unchallenged oral evidence that was not the subject of cross-examination, we had no difficulty in concluding that she was an honest and credible witness, who had had no intention of deceiving the Tribunal and indeed what she told us was reinforced by the attendance record that we, upon our careful consideration, found to be both a reliable, persuasive and cogent piece of documentary evidence.
14. Thus upon our consideration of the evidence in its totality, both oral and documentary, and for the above reasons, we had no difficulty in concluding that the Appellant had discharged the burden of proof upon her, to the requisite standard of a balance of probabilities, to show that contrary to the Respondent's understanding, the Appellant did indeed attend and complete her course of study.

**Conclusion**

15. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
16. We set aside the decision.
17. We re-make the decision in the appeal by allowing it.

Signed

Date

Upper Tribunal Judge Goldstein