



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/34146/2013

Appeal Numbers:

THE IMMIGRATION ACTS

Heard at Field House

Determination

Promulgated

On 23rd July 2014

On 1st Aug 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE FRANCES

Between:

CHINMAY PARESHBAI BHATT

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Chhotu, instructed by Ved & Co Solicitors
For the Respondent: Mr P Duffy, Senior Home Office Presenting
Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of India born on 15th April 1988. He appeals against the determination of the First-tier Tribunal dated 28th January 2014 dismissing his appeal, against the Respondent's decision of 31st October 2012 refusing further leave to remain as a Tier 4 (General) Student Migrant, for want of jurisdiction.
2. The Appellant was granted a visa valid from 21st August 2008 to 21st January 2012. In December 2011, he applied for further leave to remain, but his application was rejected for non-payment of fee. He made a second application on 9th January 2012 enclosing a postal order. This

application was acknowledged by the Respondent on 11th January 2012 and refused in March 2012. The Appellant made a third application on 26th June 2012 which was refused on 31st October 2012 (because the bank statements were dated more than one month before the application) without a right of appeal.

3. The Appellant appealed and on 18th July 2013, the First-tier Tribunal made a decision on a preliminary issue and found that the Appellant did not have a right of appeal. The Appellant requested a review of this decision, but the First-tier Tribunal refused to reconsider the decision that there was no jurisdiction to hear the appeal. On 16th August 2013, the Appellant again appealed to the First-tier Tribunal and a Basnet direction was given; the validity of the appeal was to be determined at a hearing. On 28th January 2014, the First Tier Tribunal determined the appeal on the papers and dismissed the appeal for want of jurisdiction. It is against this decision that the Appellant now appeals.
4. Permission to appeal was granted by Upper Tribunal Judge Rintoul on 27th May 2014 on the grounds that it was arguable that there had been a procedural error whereby material was not submitted to the First-tier Tribunal due to the improper action of the part of an employee of the Appellant's former representatives.
5. At the hearing before me, Mr Duffy confirmed that the second application made on 9th January 2012 was rejected as invalid for non-payment of fee. He conceded that following Basnet (validity of application - respondent) [2012] UKUT 00113(IAC), the Respondent had failed to show that the application was not accompanied by the specified fee and the Appellant did not have a right of appeal. Therefore, the decision of 31st October 2012 was not in accordance with the law. He invited me to allow the appeal to that limited extent.
6. At paragraph 27 of the determination the Judge stated "I do not find that the Respondent has asserted that the application made in January 2012 was returned as invalid as no fee was paid, as no evidence has been provided to the Tribunal that, that was the case." Mr Duffy has now confirmed the position.
7. I find that that Respondent has failed to prove its assertion that the application was invalid for non-payment of fee following Basnet. Therefore, the Appellant made an in-time application and consequently he has a right of appeal to the First-tier Tribunal. I find that a procedural error occurred whereby the Judge's decision to dismiss the appeal for lack of jurisdiction amounted to an error of law.
8. I set aside the determination dated 28th January 2014 and remake the decision as follows: The Appellant's appeal is allowed in so far as the decision of 31st October 2012 was not in accordance with the law.

Deputy Upper Tribunal Judge Frances
31st July 2014