



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

Appeal Number: IA/35749/2013

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court

**Determination
Promulgated**

On 24 June 2014

On 25 June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCARTHY

Between

QASEER UL HASSAN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Ruperalia, Just Legal Group

For the Respondent: Mr N Smart, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant argues that First-tier Tribunal Judge North failed to observe the norms of procedural fairness when conducting the hearing that took place on 12 February 2014 because he failed to ensure that the appellant had an opportunity to address the evidence relied on by the Secretary of State.
2. The appeal to the First-tier Tribunal was against the immigration decision of 17 September 2014 refusing the appellant leave to enter. The UK Border Force relied on information contained in an email exchange with

the appellant's college that the appellant had failed to attend his course or to complete assignments. The appellant sought to rebut the allegations made by the immigration authorities but without sight of the email exchange was in difficulty because it was unclear who had provided the adverse information.

3. The judge's record of proceeding clearly indicates that Mr Ruperalia advised him that he had not had sight of the documents. Mr Ruperalia made this comment at the start of the hearing whilst the judge was checking what documentary evidence was available. Mr Ruperalia asserts that the judge said the evidence would be made available to him but it never was. The judge relied on the evidence when dismissing the appeal.
4. The respondent's bundle contains correspondence between Just Legal Group and the UK Border Force that clearly shows that requests for the relevant documents had been made. Although the UK Border Force replied and provided some documents, the email exchange was never provided. That is the only document in which it is possible to identify who in the appellant's college had provided the information to the UK Border Force.
5. Mr Smart agreed that Judge North's failure to take into account Mr Ruperalia's difficulties was a procedural error that amounts to an error on a point of law because the appellant did not know the full case against him and was not given an effective opportunity to rebut the allegations made. Mr Smart agreed that the determination could not be defended and he did not seek to do so.
6. In light of these comments, which I agree with, I find that the determination contains an error on a point of law and must be set aside. As the appellant has not had a fair opportunity to defend his case in the First-tier Tribunal it is appropriate that this matter is remitted to that Tribunal for a fresh hearing.
7. The appeal can be heard by any First-tier Tribunal Judge other than Judge North.
8. I mention, merely to record the following that Mr Smart provided Mr Ruperalia with a copy of the respondent's bundle at the end of the hearing.

Decision

The determination of Judge North contains an error on a point of law and is set aside.

The original appeal is remitted to the First-tier Tribunal for a fresh decision.

Directions for the remitted hearing

- The appeal can be heard by any First-tier Tribunal Judge other than Judge North.
- The appeal will be listed after six weeks in order that the appellant has time to contact his college and obtain rebuttal evidence, if any.
- The appellant is to notify the First-tier Tribunal if an interpreter is required for the remitted hearing.
- Other directions may be set by the First-tier Tribunal.

Signed
Deputy Judge of the Upper Tribunal

Date 24.06.2014