



**The Upper Tribunal
(Immigration and Asylum Chamber) Appeal number: IA/13051/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On January 30, 2015**

**Decision & Reasons Promulgated
On February 6, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR MUHAMMAD MUSHTAQ AWAN
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance and unrepresented

For the Respondent: Mr Duffy (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan. The appellant had been granted leave to study at Leicester international College and that leave was valid until August 15, 2015. The respondent curtailed his leave with immediate effect on February 28, 2014 and at the same time issued removal directions pursuant to Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The appellant appealed under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on march 13, 2014.
3. The matter came before Judge of the First-tier Tribunal Howard (hereinafter referred to as the "FtTJ") as a paper case on August 15, 2014 and in a decision promulgated on September 17, 2014 he dismissed the appellant's appeal.
4. The appellant lodged grounds of appeal on September 26, 2014. He submitted the FtTJ erred because the respondent had failed to produce any evidence that supported her claim.
5. Judge of the First-tier Tribunal Nicholson granted permission to appeal on December 10, 2014 finding that in light of JC (Part 9 HC 395-burden of proof) China [2007] UKAIT 00027 the burden of proving a precedent fact lay on the party making the claim namely the respondent.

PRELIMINARY ISSUE

6. The appellant's representatives wrote to the Tribunal on January 27, 2015 and advised that they were without instructions and were withdrawing from the appeal. They provided evidence that suggested the appellant or someone at his place of residence had refused to sign for mail sent to him at his last known address.
7. Mr Duffy indicated that the appellant had also now ceased signing on having been served with a section 10 removal decision.
8. I was satisfied the appellant had been served with the notice of hearing as a notice had been sent to both him and his representatives on December 29, 2014. I agreed to deal with the application.

ERROR OF LAW

9. Mr Duffy accepted that the failure to submit the evidence from the college was a failing and he further accepted the FtTJ had erred in dismissing the appeal in the absence of evidence to support the refusal letter.

REMAKING THE DECISION

10. I extended Mr Duffy an opportunity to submit the missing evidence on the basis that this evidence was before me by February 3, 2015. I was provided with a copy of the notification from the sponsoring college that the appellant had failed to enrol with the college and that the sponsorship had been withdrawn on December 16, 2013. I admitted the evidence under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 as the appellant had never submitted any evidence to contradict the respondent's claim and this evidence confirmed what had been contained in the original refusal letter.

11. I therefore dismiss the appellant's appeal.

Decision

12. The decision of the First-tier Tribunal did disclose an error in law and I remake this decision and I dismiss the appellant's appeal.

13. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) an appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order was made in the First-tier and I see no reason to amend that order.

Signed:

Dated: **February 5, 2015**

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I uphold the original decision on fees.

Signed:

Dated: **February 5, 2015**

Deputy Upper Tribunal Judge Alis