



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

Appeal Number: IA/17595/2013

THE IMMIGRATION ACTS

Heard at Field House

On 2 October 2014

Determination

Promulgated

On 23rd Oct 2014

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

PRATHEEPAN NATRAJAN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Martin, Counsel instructed by Nag Law Solicitors

For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

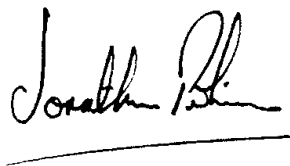
DETERMINATION AND REASONS

1. This is an appeal by a citizen of Sri Lanka against a decision of the First-tier Tribunal to dismiss his appeal against a decision of the Secretary of State refusing him leave to remain as a Tier 4 (General) Student. In very simple terms it was the Secretary of State's case that he had studied at graduate level in the United Kingdom too long to satisfy the requirements of the Rules for further leave.
2. When the case came before the First-tier Tribunal the appellant did not appear. He was ill. He was in hospital. The First-tier Tribunal correctly did not just adjourn but considered the impact of the appellant's presence and how important it was that he was able to attend. This was undoubtedly the right approach.
3. Where the First-tier Tribunal fell into error was in concluding that the appellant's presence could not have been material to the outcome of the case. The case turned on credibility. It turned on establishing just what

periods of time the appellant had spent studying at what particular level. The First-tier Tribunal decided that the appellant could not be expected to remember dates accurately. That is an astonishing finding to reach without at least giving the appellant an opportunity to comment but as, Mr Martin has pointed out, the First-tier Tribunal, in what is in many ways a very careful determination has also missed a point of potential importance.

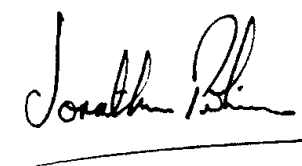
4. At the start of the appellant's witness statement there is a chronology and in that chronology the appellant said that in September 2007 he enrolled at UEL to study level 4 at BITE BSc Hons. It may be that the First-tier Tribunal thought that this was a claim to be studying at degree level but that is incompatible with the claim to be studying at level 4 which is study at below degree level.
5. It could be that the chronology, properly explained, proves the appellant's case.
6. The finding that the appellant's oral evidence could not have made any difference was wrong.
7. This is not a case where there was any reason to think that the appellant was going to be in hospital for a prolonged period. Indeed he attended the hearing before me. It was a case where having asked itself if the appellant's presence could have made a difference the Tribunal should have found that it could and should have adjourned the case for it to be heard when the appellant was better.
8. Both parties agree, but I do not think that this is in any way controversial, that the result of this decision is that the appellant has not had a fair hearing and so the case has to go back to the First-tier Tribunal to be decided again, and I so order and set aside the decision of the First-tier Tribunal. The legal error was a procedural irregularity of a serious kind and the only possible remedy is for the case to be reheard. It should be reheard in the First-tier Tribunal because the outcome depends on oral evidence being believed and the appellant is entitled to preserve his rights of appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



A handwritten signature in cursive script, reading "Jonathan Perkins", written in black ink. The signature is positioned above a horizontal line that serves as a separator.

Dated 22 October 2014



A second handwritten signature in cursive script, reading "Jonathan Perkins", written in black ink. This signature is also positioned above a horizontal line.