



IAC-FH-AI-V1

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

Appeal Number: IA/52169/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28 May 2015**

**Decision Issued  
On 19 June 2015**

**Before**

**UPPER TRIBUNAL JUDGE O'CONNOR**

**Between**

**SAI SUDHA RANI MARAPALA**

Applicant

**and**

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

Respondent

**Representation:**

For the Applicant: Mr A. Maqsood, instructed by Universal solicitors  
For the Respondent: Ms A. Holmes, Senior Presenting Officer

**DECISION AND REASONS  
ON AN APPLICATION TO REINSTATE**

**Introduction**

1. This decision relates to an application made by the Applicant on 12 February 2015 to reinstate her case before the Upper Tribunal, pursuant to rule 17(3) of the Tribunal Procedure (Upper Tribunal) Rules 2008 ("the 2008 Rules").
2. The Applicant is a citizen of India born on 15 November 1990. She appealed to the First-tier Tribunal against decisions made by the Respondent on 20 November 2013 (i) refusing her leave to remain as a Tier 4 (General) Student under paragraph 245ZX of the Immigration Rules and (ii) to remove her from the UK pursuant to section 47

of the Immigration Asylum and Nationality Act 2006. The First-tier Tribunal dismissed this appeal in a determination promulgated on the 4 July 2014 concluding, *inter alia*, that the Applicant did not meet the maintenance requirement of the immigration rule and, further, that a grant of leave for the period required by the Applicant to complete her course would lead to her exceeding the maximum period of leave she is limited to by operation of paragraph 245ZX(ha) of the Rules. The Applicant was legally represented at the hearing before the First-tier Tribunal.

3. First-tier Tribunal Judge PJM Hollingworth granted the Applicant permission to appeal to the Upper Tribunal, in a decision signed on the 1 September 2014. The covering letter sent to the Applicant with the grant of permission, which is in a standard form, referred the Applicant to enclosed directions and notified her that the Upper Tribunal would not consider evidence which was not before the First-tier Tribunal unless the Upper Tribunal had specifically decided to admit such evidence. The directions enclosed referred, *inter alia*, to the steps the parties should take to prepare for the "*forthcoming hearing*"

4. In a letter to the Tribunal dated 22 September 2014 the Applicant said:

"Please note that I lodged notice of appeal against refusal of my leave to remain application and that appeal was dismissed by the learned Tribunal.

I then still lodged an application for permission to appeal to the First-tier Tribunal which is still pending in this Tribunal.

Please note that I now intend to make a fresh application for further leave to remain as such have decided to withdraw my appeal. In this view of the matter, it is requested that I may kindly be allowed to withdraw my appeal with permission to file fresh application. The above appeal may kindly be disposed of as withdrawn and notified to me."

5. On 2 October 2014 the Upper Tribunal sent a notice to the Applicant in the following terms, on the instructions of UTJ Kopieczek:

"Thank you for your letter of 22 September 2014, asking that the appeal before the Upper Tribunal be withdrawn. The Tribunal's procedure rules do not make provision, as such, for an appeal to be withdrawn, only for a party's case or part of it to be withdrawn, subject to the consent of the Upper Tribunal.

In the circumstances, the Upper Tribunal has treated your letter as an application to withdraw your case, to which the Upper Tribunal consents. Although the First-tier Tribunal gave permission to appeal to the Upper Tribunal, the position is now therefore, that the determination of the First-tier Tribunal promulgated on 4 July 2014 dismissing your appeal is to stand."

6. The next germane event in the procedural history of this matter is the application authored by the Applicant's solicitors dated 12 February 2015, and received by the Upper Tribunal on 18 February 2015, which relevantly states:

“...As her permission was granted, she supposes to have a hearing at the Upper Tribunal. However, without receiving any legal opinion from an immigration expert or a legal adviser or any reliable sources, the Appellant has withdrawn her appeal from the Tribunal on 02 October 2014.

The applicant confirms that she thought once her permission application was granted by the Tribunal, she would be issued her Tier 4 visa and BRP card. The Appellant by mistakenly withdrawn her appeal from the Tribunal and it was her innocent mistake.

Please be advised that the Appellant was not legally represented at permission stage and aftermath. Therefore she could not understand the consequences of appeal withdrawal. As a result of the appeal withdrawal the Applicant has become an overstayer in the UK...

The Applicant now understands the consequences of appeal withdrawal and wants to continue her appeal at the Upper Tribunal so that she can have a hearing date at the Upper Tribunal...”

7. This application first came before me on the papers on 23 February 2015, at which time I directed that it be considered on notice at an oral hearing.

### **Hearing**

8. Ms Marapala gave evidence at the hearing, initially adopting a witness statement drawn in her name and dated 15 May 2015. Much of this statement, which I have fully taken into account, related not to the application to reinstate the appeal, nor indeed to the question of whether the First-tier Tribunal had erred in law in its decision, but rather to the substance of the underlying appeal. The statement does, though, assert as follows:

“[7]...Unfortunately I made a request to withdraw the appeal to the Tribunal, as I did not have any Legal Representation at time of Appeal and I was unaware of the Legal Terms and Circumstances. Now I want to proceed to the appeal.

[8] As I mentioned in the above paragraph that was unaware of not receiving the curtailment letter (60 days letter) by withdrawing the case. So after getting a legal advice and knowing the consequences of the withdrawal I decided to proceed with the Appeal so that if I win the appeal I will receive my curtailment letter to make a fresh application to finish my course.”

9. There was no additional examination in chief.
10. Under cross examination, and questioning by the Tribunal, the Applicant stated that she did not seek legal advice prior to withdrawing her appeal because she did not want to waste time on a hearing and felt that *“it would be good”* in those circumstances to withdraw so she *“could get a letter to make a fresh application for the 60 days letter”*. She wanted to finish her course *“as quickly as possible”*.
11. The Applicant was asked whether she had understood that by withdrawing her appeal that would be the end of the proceedings before the Upper Tribunal; she

responded in the affirmative – adding that she had wanted to withdraw her appeal so that she could make a fresh application. She continued by confirming that she had attended Coventry University and was informed whilst there that *“the decision of the Upper Tribunal would have to come out and then [she] could make an application and [she] would be given a CAS. They said that they could not give [her] a CAS whilst the appeal was ongoing.”*

12. The Applicant thereafter told the Tribunal that she had seen a *“known solicitor”*, named Cameron [or Kamrun], on 5 October 2014 – this being upon receipt of the Tribunal’s notice of 2 October. He had informed the Applicant that she should wait for a hearing and that the Tribunal did not have the power to withdraw the appeal. She did not pay for the solicitor’s advice and does not know which firm this solicitor worked for. She could not get another appointment with him, although she tried to do so. Having heard nothing further from the Tribunal the Applicant went to see her current solicitors in February 2015.

### Submissions

13. Mr Maqsood requested the Tribunal extend time for the Applicant to lodge the request to reinstate her appeal, pursuant to rules 17(4) and 5(3)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008. In support of such application reliance was placed on (i) the fact that permission to appeal had been granted (ii) that the Applicant had diligently sought legal advice after having received the notice of 2 October (iii) that the advice she had been given was wrong (iv) that the Applicant had been entitled to rely on such advice and (v) that once she had instructed her current solicitors the application was made expeditiously.
14. As to the substance of the application to reinstate the Applicant’s appeal, it was submitted that this should be granted given (i) the Applicant had been granted permission to appeal, (ii) she had withdrawn her appeal on the basis of a misunderstanding i.e. she had thought that by doing so she would receive a letter granting her leave to remain in the UK, and (iii) it would be in the interests of justice and fairness to reinstate her appeal.
15. In response Ms Holmes commended to the Tribunal that the application to extend time should be refused, given the paucity and contradictory nature of the explanation provided in this regard by the Applicant. She further submitted that if time were to be extended the application to reinstate the appeal should be refused; the Applicant having been fully aware that by withdrawing her appeal she would bring an end to the proceedings before the Upper Tribunal.

### Discussion

16. I turn first to rule 17 of the 2008 Procedure Rules which relevantly states as follows:

“17(1) Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it –

- (a) at any time before a hearing to consider the disposal of the proceedings... by sending or delivering to the Upper Tribunal a written notice of withdrawal...
- (2) Notice of withdrawal will not take effect unless the Upper Tribunal consents to withdrawal except in relation to an application for permission to appeal.
- (3) A party which has withdrawn its case may apply to the Upper Tribunal for the case to be reinstated.
- (4) An application under paragraph (3) must be made in writing and be received by the Upper Tribunal within one month after –
  - (a) the date on which the Upper Tribunal receives a notice under paragraph (1)..."

*Application to extend time*

17. By rule 17(4) of the 2008 Rules any application made to the Upper Tribunal to reinstate a case that has previously been withdrawn, must be made in writing and received by the Upper Tribunal within one month after the date on which the Upper Tribunal received the notice requesting such withdrawal. In the instant matter such notice is stamped as having been received by the Upper Tribunal on 29 September 2014. The application to reinstate the appeal was not received until the 16 February 2015 i.e. approximately 3 ½ months outside of the one month time limit imposed by the Rules.
18. There has plainly been a serious and significant delay in making the application to reinstate this appeal. No explanation for this delay is provided in the letter of 12 February 2015 from Universal solicitors, nor indeed is an application for an extension of time made therein. Furthermore, the Applicant's statement does not allude to the circumstances which led to her delaying in the making such application.
19. Evidence was, belatedly, given in this regard under cross-examination. Having considered that evidence in the round with all of the other evidence and information before me, I am not satisfied that the Applicant has established on the balance of probabilities that such evidence is wholly truthful. I find it wholly implausible that she would have been provided advice by a solicitor to the effect that the Upper Tribunal has no power to act as it did, particularly in circumstances where, as the Applicant claims, she provided this solicitor with a copy of the Tribunal's notice of 2 October 2014. It is equally implausible, having advised the Applicant that the Tribunal could not do something that it had already done, that further advice would be given to the effect that the Applicant should simply wait for a hearing date. It would have been obvious to any legally qualified person that there was no prospect of a hearing date being provided in such circumstances.
20. These conclusions are reinforced by the lack of evidence as to any attempt having been made to contact this solicitor in order to seek, for the purposes of this hearing, confirmation from him of the advice he gave to the Applicant. Although the

Applicant states that she could not recall his full name, did not meet him in an office and did not know the name of the firm he worked for, on her own evidence she did manage to contact him in order to seek advice in the first place and had sufficient information to make an attempt to obtain a further appointment with him.

21. I also observe that Applicant did not, at any point prior to instructing her current solicitors, make further contact with the Upper Tribunal in order to ascertain the current position regarding her appeal. She is a person with a good command of the English language, as was evident before me. The contact details for the Upper Tribunal are readily available online and were on the notice sent to her in October 2014; indeed she contacted the Upper Tribunal, apparently of her volition, when withdrawing her appeal.
22. Having considered all of the circumstances of the case, including the length of the delay and the explanation for it, and having taken into account the overriding objective of the 2008 Procedure Rules, I am not persuaded to extend time in relation to the Applicant's application to reinstate her appeal. It does not seem to me that this conclusion affronts the interests of justice or the overriding objective of the 2008 Rules. The application to reinstate the appeal was made out of time and I refuse to admit it. This conclusion disposes of the application before me.

*Application to reinstate the appeal*

23. Even if I were to have extended time I would, nevertheless, have refused the Applicant's application. It is clear to me that the Applicant understood, at the time she withdrew her appeal, that by doing so she would bring an end to the proceedings before the Upper Tribunal. The Applicant gave clear evidence to this effect orally at the hearing and such evidence also corresponds with what can be understood from the terms of the letter of 22 September, in which the Applicant uses the phrase "*the appeal may be disposed of as withdrawn*" (emphasis added). I remind myself again that the Applicant has a good command of the English language. I find the fact that the Applicant understood that her appeal before the Upper Tribunal would be brought to end by her application of the 22 September 2014 to be a weighty factor in my consideration of whether her appeal should be reinstated.
24. Mr Maqsood places great store on (i) the fact that the Applicant was granted permission to appeal and (ii) that the decision to withdraw her appeal was undertaken without legal advice and was therefore, it is said, taken on the basis of a misunderstanding of the consequences that would flow therefrom.
25. As to the former, the fact that permission to appeal was granted carries little weight. An Applicant does not have 'a case' before the Upper Tribunal until permission is granted. Consequently, an application to reinstate a case can only be made in such circumstances where it has.
26. As to the latter point made by Mr Maqsood, even if correct I find this to be little assistance to the Applicant in the circumstances of this case. It was the Applicant's choice not to seek legal advice before taking the course she did. She had recently

instructed legal representatives to appear on her behalf at the hearing before the First-tier Tribunal, and she has offered no satisfactory explanation as to why she did not seek further advice from the same firm, or indeed from any other person qualified to give advice in this field, prior to withdrawing her appeal. She did receive some advice from a member of staff at Coventry University at this time and, significantly, that advice did not include an indication that the Applicant's appeal should be withdrawn.

27. Looking at all of the evidence in the round, I conclude that it is the terms of the letter of 22 September 2014 which best represents the truth of the Applicant's intentions and motives in withdrawing her appeal, and her understanding of the consequences of doing so. It is in this letter that the Applicant first chose to articulate her understanding of the position. There is no mention in the letter of 22 September that the Applicant understood that, without more, she would be granted a period of leave upon withdrawing her appeal, and I observe that she twice refers therein to her intention to make an application for further leave.
28. I, therefore, conclude that at the time the Applicant withdrew her appeal before the Upper Tribunal she was aware that in doing so that would be the end of the proceedings before the Upper Tribunal and the end of her appeal. She was also aware at that time that she had failed in her appeal before the First-tier Tribunal. She withdrew her appeal in order to facilitate the making of a fresh application to the Secretary of State.
29. I do not accept, having taken into account all of the circumstances of the case, that the interests of justice dictate that this appeal should be reinstated.

### **Decision**

The Applicant's application to reinstate her appeal is not admitted.

Signed:



Upper Tribunal Judge O'Connor  
Date: 2 June 2015