



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA 15541 2013

THE IMMIGRATION ACTS

Heard at Field House
On 28 November 2013

Determination Promulgated
On 9 December 2013

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS

Between

SHAHZAD HUSSAIN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The appellant did not appear and was not represented

For the Respondent: Mr G Jack, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by a citizen of Pakistan against a decision of the First-tier Tribunal dismissing his appeal against a decision of the respondent to refuse him leave to remain as a Tier 4 (General) Student Migrant. In simple terms the application was refused because the appellant had not produced the documents he was required to produce at the required time. Permission to appeal to the Upper Tribunal was granted on grounds complaining that the documents had in fact been produced.
2. The appellant did not appear before us. The records show that he had been served properly by post in accordance with the rules. Given the honest and realistic approach that Mr Jack had indicated that he intended to take we saw no point in making any enquiries into the appellant's absence.

3. Mr Jack was quite satisfied, having looked at the file carefully, that this is a case where the evidential flexibility policy does apply. The point that he made is that the documents that had not been produced, or at least had not been found by the Secretary of State, were referred to at an early stage in correspondence so that the Secretary of State knew that they were alleged to exist. They were also mentioned in a CAS letter which further tended to confirm their existence.
4. Mr Jack was satisfied that, in accordance with her published policy, when confronted with corroboratory evidence of this kind the Secretary of State should have stepped back and asked herself if this was a case where the documents were not produced because they did not exist or because of a mistake, or if in fact they were produced by the appellant and lost by the Secretary of State. He did not concede that they had been lost but recognised that this was a possible explanation for their apparent absence.
5. We agree with Mr Jack that in these circumstances the Secretary of State was required by the policy to notify the appellant of the difficulty and give him an opportunity to respond. She did not do that.
6. It follows that the decision is not in accordance with the law and we make a finding setting aside the decision of the First-tier Tribunal. We rule that the decision complained of is not in accordance with the law. The Secretary of State must remake the decision lawfully with proper regard to her policy.

Signed
Senior Immigration Judge
(Judge of the Upper Tribunal)



Dated 28 November 2013