



**Upper Tribunal  
(Immigration and Asylum Chamber)** Appeal Number: IA/01985/2014

## **THE IMMIGRATION ACTS**

**Heard at: Field House  
On: 21 November 2014**

**Decision Promulgated  
On: 27 November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS**

**Between**

**SHAGINDRA KOGULARAJ**

Appellant

**and**

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

Respondent

### **Representation**

For the Appellant: No appearance

For the Respondent: Mr E Tufan, Home Office Presenting Officer

### **DECISION AND REASONS**

1. This is an appeal by the Appellant, a citizen of Sri Lanka, against the determination of First-tier Tribunal Judge Bradshaw in which he dismissed the Appellant's appeal against the Secretary of State's decision to refuse to vary leave to remain as a Tier 4 (General) Student Migrant.
2. The application under appeal was made on 31 May 2013 and was refused by reference to paragraph 245ZX(ha) of the Immigration Rules (HC395) on 12 December 2013. The Appellant exercised his

right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Bradshaw on 28 May 2014 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. His application was refused by First-tier Tribunal Judge Cruthers and on renewal was granted by Upper Tribunal Judge Goldstein.

3. At the hearing listed before me the Appellant was not present and not represented. The case file showed that Notice of Hearing had been duly sent to both the Appellant and to his nominated legal representatives. There was no response or further representations made and there was no explanation for non-attendance and no application to adjourn. In all these circumstances I decided to proceed in the absence of the Appellant.
4. For the Respondent Mr Tufan relied on the rule 24 response filed on 7 November 2014 and added that the Appellant's assertion that the Respondent should have made enquiries to ascertain the length of the Appellant's course was without foundation.
5. I reserved my decision.

### **DECISION**

6. This appeal involves a very narrow issue as put forward in the grounds of appeal to the Upper Tribunal. The Appellant applied for variation of leave to remain as a Tier 4 (General) Student Migrant. His application was refused because the Respondent was satisfied that the application would cause the Appellant to exceed the 5 year maximum period allowed for degree level study. The Respondent noted that the Appellant commenced his studies on 2 November 2009 and on the basis of the application submitted would not complete those studies until 31 May 2015.
7. At the hearing before the First-tier Tribunal the Respondent conceded that the Appellant's studies in the United Kingdom commenced with an English language course that was not degree level study. It was agreed that his first degree level course ran from 1 February 2010 to 31 January 2013 which was exactly 3 years. Both representatives also agreed that his current course ran from 28 May 2013 to 30 May 2015 and that this meant that there was an excess of either 2 or 3 days over the 5 year period allowed. The Appellant's representative argued that 30 May 2015 was shown as 'the expected end date' of the course and suggested that the Respondent had failed to make enquiries of the college to ascertain whether this was the actual end date and should have done so. He said that there was unfairness involved.
8. In dismissing the appeal the Judge found (at paragraph 23) that the Respondent was not under a duty to make enquiry of the

college to check dates. He further found that 'expected end date' was the day that the college expected the course would end and that whereas this was only two or three days outside the limit allowed it nevertheless caused the application to fall outside the rules.

9. In grounds of appeal to the Upper Tribunal the Appellant essentially repeats the argument put forward to the First-tier Tribunal namely that Respondent should have made enquiries to ascertain the exact date of completion of the course and that having failed to do so the Respondent's decision was therefore unfair.
10. In my judgment this is an appeal that stands no prospect of success. Like the First-tier Tribunal Judge I have some sympathy for the Appellant on the basis that the prime reason for refusal was that the Respondent took into account the English language course at the start of the Appellant's studies. At the hearing it was accepted that the Respondent was wrong to do so. However having taken out the English language course from the calculation the Appellant was still 2 or 3 days over the limit. The CAS clearly showed 31 May 2015 as the expected end date. An expected end date is not an approximate end date it is the date on which the college expects a course to end. There is in my judgment no duty on the Respondent to check with the college to see if the expected end date is indeed expected to be the date on which the course ends. No authority was given for such a proposition and it is in my judgment facile to suggest that such a duty is in any way implied. It is not. The length of the course exceeds that allowed by 2 or 3 days. In accordance with the Immigration Rules the Respondent refused the application. This is unfortunate but it is not unfair.
11. There is no error of law. This appeal is dismissed.

### **Summary**

12. The decision of the First-tier Tribunal involved the making of no error of law.
13. This appeal is dismissed.

**Signed:**

**Date: 26 November**

**2014  
J F W Phillips  
Deputy Judge of the Upper Tribunal**