



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

Appeal Numbers: IA/18190/2014
IA/18191/2014

THE IMMIGRATION ACTS

Heard at Bradford

On 23rd September 2014

Determination

Promulgated

On 3rd October 2014

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**PRIYANTHA UDAGEDARA
NILUSIKA ARANTHI PATHIRANA IMIYA PATHIRANNAHALAGE**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms R Frantzis, Counsel instructed by Craig Solicitors
For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the appellants' appeal against the decision of Judge Wilson made following a hearing at Bradford on 9th July 2014.

2. The appellants produced to the judge an email from the Premium Customer Service Team Licensed Manager at UK Visas and Immigration dated 3rd February 2014 in which she stated:

“Although the students qualification has been awarded I have arranged for the students application to be considered exceptionally in the light of their previous refusal, should they wish to submit a fresh application.”

3. The appellant did submit a fresh application in reliance upon the undertaking but it was refused on the sole basis that it was made after the end of his Ph.D course.
4. It is implicit from the email that that would not be the basis upon which the application would be refused.
5. The judge did not consider the email. He dismissed the appeal under the Immigration Rules because it was a requirement of the doctorate extension scheme under which his application was considered that it be made no more than 60 days before the expected end of his Ph.D course.
6. Permission to appeal was granted by Judge Mailer on the basis that the respondent's decision was not in accordance with the law.
7. Mrs Pettersen accepted that the respondent had not acted lawfully in inviting the appellant to make a fresh application out of time but then refused it on the basis that his qualification had been awarded (Rule 245X(n)(iv)).

Decision

8. The original judge erred in law. His decision is set aside. It is re-made as follows. The appeal is allowed insofar as the appellants await a lawful decision from the Secretary of State.

Signed

Date

Upper Tribunal Judge Taylor