



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

Appeal Number: IA/09008/2014

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 10th December 2014

On 2nd January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

NILES BHOJABHAI JADEJA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Plowright, Counsel, instructed by Bhattarai & Co
Immigration Practice

For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India and his date of birth is 6 April 1988. He made an application as a Tier 4 (General) Migrant under the points-based system on 28 November 2014 and his application was refused by the Secretary of State in a decision of 3 February 2014.

2. The reason for the decision is that the appellant did not provide documents as specified on the CAS letter; namely, the academic transcript from Sterling Academy and the City and Guilds English Certificate.
3. The appellant appealed and his appeal was dismissed by Judge of the First-tier Tribunal Thew in a determination that was promulgated on 5 September 2014 following a hearing on 6 August 2014. Permission was subsequently granted to the respondent by Judge P J M Hollingworth in a decision of 20 October 2014. Thus the matter came before me.
3. The appellant had provided the abovementioned documents to the respondent prior to the decision although they were not submitted along with the application. Judge Thew noted this and she gave the Presenting Officer the opportunity to consider any discretion but the Presenting Officer indicated to her that there was no discretion and the appeal went ahead under the Rules. The two documents were received by the respondent on 3 February on 2014 which is the same date as the reasons for refusal. The appellant had received a letter from the respondent stating that the documents had been received after the decision had been made but this was not the case.
4. The CAS letter was assigned to the appellant on 22 November 2013 and his application was submitted six days after this. He had failed to include the documents putting it down to human error that he had lost them. However, sent them to the respondent on 3 December 2014. The judge accepted the appellant's evidence about the documents, but she found that he could not meet the requirements of the Rules and that he was not assisted by Section 245AA of the Rules and she went on to dismiss his appeal under the Rules.
4. At the hearing before me Mr Duffy confirmed that his records showed that the documents were received by the respondent at 6.40 a.m. on 3 December 2014 and the decision was made at 11.55 a.m. Thus they were with the Secretary of State prior to the making of the decision. This information was not before Judge Thew. In Mr Duffy's view, in accordance with the current policy of the Secretary of State (that is that they will take into consideration documents which are before them at the date of the decision if they were in existence when the application was made) they should have been taken into account by the decision maker. Thus in his view there was an error of law in the decision of the First-tier Tribunal.

Error of Law

5. In the light of the concession made by Mr Duffy, in my view, the decision is not in accordance with the law. There is no lawful decision and the appeal should be allowed to this limited extent.

6. I set aside the decision of the First-tier Tribunal to dismiss the appeal and allow the appellant's appeal to the limited extent that the decision is not lawful.

Signed

Joanna McWilliam

Date 18.12.14

Deputy Upper Tribunal Judge McWilliam