



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

**Appeal IA/47047/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 8<sup>th</sup> March 2016**

**Decision & Reasons Promulgated  
On 13<sup>th</sup> April 2016**

**Before**

**UPPER TRIBUNAL JUDGE WARR**

**Between**

**VIJAY KUMAR**

**(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE**

Respondent

**Representation:**

For the Appellant: Mr S Bellara, instructed by Louis Kennedy, Solicitors  
For the Respondent: Mr C Avery, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of India born on 11 March 1982. He appeals the decision of the respondent on 18 November 2014 to refuse to grant him further leave to remain as a Tier 4 Student.
2. The appellant did not appear and was not represented before the First-tier Tribunal. The judge dismissed his appeal in a determination sent out on 1 July 2015.
3. The judge noted that the appellant said he had had leave to remain until 30 April 2014 as a student and had submitted all mandatory documents with his application and did not understand why his application had been refused. No reasons had been given for the refusal.
4. The judge dismissed the appeal finding that the refusal notice clearly set out the basis for refusing the application, a valid Confirmation of Acceptance for Studies (CAS) not having been provided. A letter had been sent out by the respondent on 18 September 2014 in discharge of her duty to act fairly, giving the applicant 60 days to submit a new CAS.
5. The appellant appealed and submitted that the respondent appeared to have served different decisions on the appellant and the Tribunal and the appellant had not received any written reasons for refusal.
6. Designated First-tier Judge Zucker granted permission. He noted that it was concerning that the respondent's explanatory letter dated 18 November 2014 appeared to have been sent to the Tribunal by fax and was not within the respondent's bundle. He commented: "This would appear to lend credence to the appellant's submissions in the grounds which should be read together with his statement and skeleton argument placed before the [First-tier] Tribunal."
7. He found it arguable that there was procedural unfairness.
8. Mr Bellara submitted that the key document missing was the missing explanatory statement which had not reached the appellant and the appeal should be remitted for a fresh hearing in the light of procedural unfairness.
9. I have carefully considered the respondent's response and the observations of Mr Avery.
10. It does appear clear from the court file that the Tribunal contacted the respondent on 4 June 2015 as although it was said that full details of the decision were provided "in the attached letter", the letter was not enclosed. The details were required for the hearing on 17 June 2015.
11. It may be said that the appellant did not help himself by deciding not to attend the hearing but it is the primary duty of the respondent to furnish the appellant and the Tribunal with the material relied upon.

12. I agree with the point identified by Judge Zucker and in the premises it is not established that the appellant was served with the respondent's explanatory statement as he contends and accordingly there was procedural unfairness.
13. I am satisfied there was a material error of law in the determination.
14. In the premises I set aside the decision of the First-tier Judge and direct that the appeal be remitted for hearing afresh on all issues.
15. The appeal is allowed to the extent indicated.

Signed

G Warr, Judge of the Upper Tribunal

6 April 2016

**Fee Award**

I am not satisfied that it would be appropriate to make a fee award at this juncture in the particular circumstances of this case.