



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/24768/2015

THE IMMIGRATION ACTS

Heard at Birmingham
On 29 September 2017

Decision & Reasons Promulgated
On 27 November 2017

Before

UPPER TRIBUNAL JUDGE LANE

Between

**IQBAL SINGH SHERGILL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Fraczyk, instructed by Louis Kennedy, Solicitors
For the Respondent: Mr Singh, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Iqbal Singh Shergill born on 12 December 1984 and is a male citizen of India. He appealed against the decision of the respondent dated 19 June 2015 to refuse his application for further leave to remain on human rights grounds. The appellant had been in the United Kingdom lawfully as a student with several periods of leave, the last of which was due to terminate on 30 December 2015. The

appellant's last application for further leave to remain had been refused on the basis that the appellant had overstayed for more than 28 days before submitting his application. By a decision dated 12 November 2013, the Secretary of State had sought to curtail the appellant's leave to remain. The Home Office had received information from the appellant's educational sponsor on 9 January 2013 that he had ceased studying with them. The letter states that,

the Home Office records have been checked and there was no evidence that you have made an application to change your sponsor or made a fresh application for entry clearance, leave to enter or leave to remain in the United Kingdom in any capacity."

Leave was thereby curtailed under paragraph 323A(a)(ii)(2) of HC 395 (as amended).

2. The appellant appealed against the decision to the First-tier Tribunal (Judge M Symes) which, in a decision promulgated on 30 December 2016, dismissed the appeal. Judge Symes found that the appellant had no right of appeal and that the notice of curtailment had been duly served upon him. It followed that the appellant's last application for further leave to remain had, following the curtailment of his existing leave, been properly rejected by the Secretary of State on the basis that the appellant had overstayed. The appellant did not appear before the First-tier Tribunal and the hearing was dealt with in the appellant's absence. The judge wrote as follows:

9. Subject to any successful challenge to the Secretary of State's treatment of the most recent application as out of time, it seems to me that the appellant had become an overstayer from the time the additional period of leave afforded him once the original grant had been curtailed, expired. When he was refused further leave in June 2015, the lack of leave which overshadowed his application was not otherwise "the result of the refusal" rather part of his earlier overstaying, since January 2014.

10. The question arises as to whether the appellant was duly served with a notice of curtailment decision. The Immigration (Leave to Enter and Remain) Order 2000 at Article 8ZB addresses *presumptions about receipt of notice*. Article 8ZA expressly allows for service by post and electronically to an e-mail address provided for correspondence by the person or the person's representative.

8ZB - Presumptions about receipt of notice

1. Where notice is sent ... it should be deemed to have been given to the person affected, unless the contrary is proved
 - (a) where the notice is sent by postal service
 - (i) on the second day after it was sent by postal service in which delivery or receipt is recorded if sent to a place within the United Kingdom;
 - (b) whether the notice is sent by fax, e-mail, document exchange or courier on the day it was sent ...

3. The judge found that the notice had been legally served. He found that service had been affected at the appellant's last known e-mail address. The judge wrote:

So the burden of proof in truth effectively shifts to the appellant to establish that the Secretary of State has failed to effectuate service upon him, given the attempt to serve him via an e-mail address. Had he attended a hearing before me to explain his side of things, it is conceivable an explanation would have been given that discharged that burden. However he has not done anything to suggest that the Home Office attempts to serve him were in any way misguided and in those circumstances I do not accept that the "contrary is proved" regarding the normal course of service.

4. The grounds of appeal challenge the judge's findings. It appears to be common ground that the notice of curtailment was sent by post to [West Bromwich]. The notice was also served on the appellant by email at [r*****]@yahoo.com. The grounds of appeal assert that this address is "not the appellant's e-mail address."
5. Mr Singh, who appeared for the Secretary of State, produced a copy of the curtailment notice which is dated 12 November 2013 which is marked "served by via e-mail." He also produced a copy of the letter of 4 September 2013 (which had been served by post at [West Bromwich]) which records that the appellant's educational sponsor had informed the Home Office that the appellant was no longer studying with them. Mr Singh also produced screen shots from the Home Office database. The first shows an update of the database in relation to the appellant's records and is dated 12 November 2013. The text records that correspondence sent to the appellant had been returned. The entry records that:

A fresh 60 day curtailment period is to be given to the student to be able to apply for new leave or to leave the UK. Curtailed leave is now to expire on 11 January 2014. Form ICD3971 [the decision of 4 September 2013 - see above] sent to applicant via e-mail to [r*****]@yahoo.com.

6. The second screen shot bears an earlier date (4 September 2013), it shows the appellant's postal address as [West Bromwich] and his e-mail address as [r*****]@yahoo.com.
7. A final screen shot from the database is dated 28 June 2014. This shows the appellant's current address in East Ham, London and gives a different e-mail address, namely [m*****]@hotmail.co.uk.
8. I find that the judge did not err in law. The screen shots produced by the Senior Presenting Officer were, of course, not available to the judge at the hearing. However, these screen shots simply confirm that the facts as found by the judge were accurate. At the time of the service of the September 2013 decision, records held by the Home Office showed that the appellant's address was [West Bromwich] and his e-mail address [r*****]@yahoo.com. New particulars were not notified to the Home Office until 28 June 2014. The notice of curtailment served by post to [West Bromwich] was not properly served, as the respondent acknowledges, because the letter was not called for or receipt acknowledged by the appellant. Mr Fraczyk argued that the respondent should have been put on notice by the failure of service

that the particulars of the appellant's address had changed. Whilst that may well have been the case in respect of the appellant's residential postal address (had he been living at that address one would have expected him to have signed for the letter sent to him there), I can see no reason at all to conclude from that fact that the appellant's e-mail address held by the Home Office should also have changed. There is no logic in the proposition that one is likely to change one's e-mail address when one moves residence. Significantly, the e-mail sent to the appellant did not "bounce"; the sender was not notified that the email was undeliverable so the account remained in existence even if the appellant had begun to use a different account. No new e-mail address was notified by the appellant until after the service of the decision to curtail leave. It follows that, notwithstanding the failure of the postal service, service on the appellant of the notice of curtailment by e-mail had been good service. Accordingly, the judge did not misunderstand the evidence but rather reached an outcome plainly available to him on that evidence. In the circumstances, the appeal is dismissed.

Notice of Decision

9. This appeal is dismissed.
10. There is no anonymity direction.

Signed

Date 20 October 2017

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

The appeal has been dismissed so no fees are repayable

Signed

Date 20 October 2017

Upper Tribunal Judge Lane