



**In the Upper Tribunal
(Immigration and Asylum Chamber)
Judicial Review**

In the matter of an application for Judicial Review

The King on the application of
Vishavjeet Singh

Applicant

versus

Secretary of State for the Home Department

Respondent

ORDER

BEFORE Upper Tribunal Judge Jackson

HAVING considered all documents lodged and having heard Mr J Gajjar of Counsel, instructed by SAJ Legal, for the Applicant and Mr M Biggs of Counsel, instructed by GLD, for the Respondent at a hearing on 14 May 2024.

IT IS ORDERED THAT:

- (1) The application for judicial review is refused for the reasons in the attached judgment.
- (2) The Applicant is to pay the Respondents reasonable costs, to be assessed if not agreed.
- (3) No application for permission to appeal was made but in any event I am required to consider whether to grant permission to appeal. There is no arguable error of law in the judgment attached and therefore permission to appeal is refused.

Signed: **G Jackson**

Upper Tribunal Judge Jackson

Dated: **18th June 2024**

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): 19/06/2024

Solicitors:
Ref No.
Home Office Ref:

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a point of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).



Case No: JR-2023-LON-002181

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breems Buildings
London, EC4A 1WR

18th June 2024

Before:

UPPER TRIBUNAL JUDGE JACKSON

Between:

THE KING
on the application of
Vishavjeet Singh

Applicant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Mr J Gajjar

(instructed by SAJ Legal), for the Applicant

Mr M Biggs

(instructed by the Government Legal Department) for the Respondent

Hearing date: 14 May 2024

J U D G M E N T

Judge Jackson:

1. In this application for Judicial Review, Mr Singh challenges the Respondent's decision dated 26 May 2023 refusing his application for leave to remain as a skilled worker, as maintained on administrative review on 7 July 2023. The sole issue in this application is whether the Respondent had properly served an earlier decision dated 7 January 2022 curtailing the Applicant's previous leave to remain as a student to 8 March 2022. That leave to remain was curtailed as the Respondent had received notice on 9 February 2021 that

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the Applicant had ceased studying and his sponsorship had been withdrawn.

2. The Applicant had initially applied for entry clearance as a Tier 4 (General) Student on 7 September 2020 which was granted on 8 September 2020 with leave to remain to 1 October 2023. From within the United Kingdom, he later made an application under the EU Settlement Scheme on 13 November 2021 which was refused on 24 March 2022. He then applied for leave to remain as a Tier 2 skilled worker, which was refused on 26 May 2023 on the basis that he did not have valid leave to remain at the date of application.
3. At the outset of the hearing, there were two applications from the parties to be determined. The first was an application by the Respondent to cross-examine the Applicant, which was unopposed. The second was an application by the Applicant to rely on an additional written statement from Ms Ritika which was opposed by the Respondent on the basis that it had been served late and with insufficient time for the Respondent to pursue methods to test the evidence given that the author was outside of the United Kingdom.
4. Given the nature of the issue in this appeal, which requires a decision on whether the Applicant has rebutted the presumption of service, this is one of the very rare cases in which it was appropriate to hear oral evidence of the Applicant. The first application was therefore granted to allow the Applicant to be cross-examined.
5. I indicated to the parties that I would allow the second application to rely on the written statement of Ms Ritika, but that submissions would be required as to the weight that can be attached to that evidence, including in light of the circumstances and timing of that evidence.

Legal framework

6. The Respondent may vary a person's leave to remain, including curtailing it where the conditions for its grant are no longer met pursuant to the power in sections 3 and 4 of the Immigration Act 1971, the latter requires notice to be given in writing to the person affected by a decision.
7. The Immigration (Leave to Enter and Remain) Order 2000 (the "2000 Order") makes provision, inter alia, for the form and manner of granting, refusing or varying leave by notice in writing, which so far as relevant provides:

"Grant, refusal or variation of leave by notice in writing

8ZA.-(1) *A notice in writing –*

- (a) ...;
- (b) ...;
- (c) ...;

- (d) *varying a person's leave to enter or remain in the United Kingdom, may be given to the person affected as required by section 4(1) of the Act as follows.*

(2) *The notice may be –*

- (a) *given by hand;*
- (b) *sent by fax;*
- (c) *sent by postal service to a postal address provided for correspondence by the person or the person's representative;*
- (d) *sent electronically to an e-mail address provided for correspondence by the person or the person's representative;*
- (e) *sent by document exchange to a document exchange number or address;*
or
- (f) *sent by courier.*

(3) ...

Presumptions about receipt of notice

8ZB.-(1) Where a notice is sent in accordance with article 8ZA, it shall 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;*
 - (ii) *on the 28th day after it was posted if sent to a place outside of the United Kingdom;*
- (b) *where the notice is sent by fax, e-mail, document exchange or courier, on the day it was sent.*

(2) ...”

8. The 2000 Order was considered by the Court of Appeal in R (Alam and Rana) v Secretary of State for the Home Department [2020] EWCA Civ 1527, which found, so far as relevant, as follows:

“29. In my judgment, the giving of notice for the purposes of section 4(1) of the 1971 Act and the 2000 Order does not require that the intended recipient should have read and absorbed the contents of the notice in writing, merely that it be received. If it were not so, a failure to open an envelope containing the notice, for whatever reason, would mean that notice was not given. Similarly, I do not consider that the recipient must be made aware of the notice. Again, a recipient who allows mail to accumulate in a mailbox or on a hall table will not be aware of the notice. Proof of such facts should not enable the person to whom the mail is addressed to establish that the notice was not given, by being received.

30. Receipt, and thus the giving of notice, can plainly be effected by placing the notice in the hands of the person affected. So much is recognised by Article 8ZA(2)(a). In my judgment, however, receipt in the case of an individual is not so limited. Receipt of an email, for example, will be effected by the arrival of the email in the Inbox of the person affected. Likewise, documents arriving by post will normally be received if they arrive, addressed to the person affected at the dwelling where he or she is living, at least in the absence of positive evidence

that mail which so arrives is intercepted. A document received at an address provided to the SSHD for correspondence is received by the applicant, even if he does not bother to take steps to collect it.

31. It follows that the burden of proving the negative, non-receipt, in the face of convincing evidence leading to the expectation of receipt, will not be lightly discharged. In particular it will not be discharged by evidence, far less by mere assertion, that the notice did not come to the attention of the person affected.

*32. It is not unreasonable to assume that judges in the Administrative Court will often be faced with applications for permission to apply for judicial review based on factual allegations that litigants did not receive notices in writing or other documents curtailing their leave to remain, and that in consequence the exercise by the SSHD of her powers in relation to that litigant have not been validly exercised. Some examination of the merits is necessary at the permission stage. I think that the test which should be applied is whether the material before the court raises a factual case which, taken at its highest, could properly succeed in a contested factual hearing. If so, permission should be granted, subject to discretionary factors such as delay (compare by way of example *R (FZ) v London Borough of Croydon* [2011] EWCA Civ 59 at [6] to [9]).*

33. Drawing this together, when considering permission to apply for judicial review in such cases the following points should be borne in mind in the light of the above discussion:

- (a) where a method of sending within Article 8ZA (2) or (3) has been followed, the burden falls on the litigant to show he has a real prospect of establishing that the document was not received in the sense in which I have interpreted that word;*
- (b) at the permission stage, the litigant will need to do more than show that the notice did not come to his attention, but establish how he proposes to show that it was never actually received in the sense which I have explained;*
- (c) subject to discretionary factors such as delay, the question will be whether the material before the court raises a factual case which, taken at its highest, could properly succeed in a contested factual hearing;*
- (d) each case will nevertheless depend on its own facts.”*

9. The issue of rebuttal of the presumption that notice had been given was more recently considered in *R (ota Marco Antonio Rodriguez Escobar) v Secretary of State for the Home Department* [2024] EWHC 1097 (Admin), in which it was confirmed that the possibility of rebutting the presumption would apply equally to service of a notice by email as it would to service of notice by mail. Sheldon J went on to state:

“30. I acknowledge that Floyd LJ did say at 30 that “Receipt of an email, for example, will be effected by the arrival of the email in the Inbox of the person affected”, thereby implying that there could be no possibility of rebuttal. Nevertheless, this statement was clearly obiter as the case before the Court of Appeal was concerned with notice by mail, and it would be surprising if

consideration was given by Lloyd LJ to the possibility of interception of an email that had arrived in an inbox.

30. As has been highlighted in the present case, it is theoretically possible for an email to be intercepted once it has arrived in an inbox. Persons can share inboxes, or allow others to access them. The other person could delete the relevant email from the Secretary of State accidentally – when scrolling through the inbox – or deliberately. An email inbox can be interfered with by a third party even where it is password protected, and that password is not deliberately shared with others.

31. I consider, therefore, that it is permissible on the facts of a particular case for an applicant to seek to persuade the Secretary of State, and subsequently the Court or relevant tribunal, that the email was intercepted before it could be read. Of course, the burden of persuasion will be on the applicant, and the burden will not be lightly discharged. Indeed, I would expect the Secretary of State (or the Court or relevant tribunal) to be somewhat sceptical of an argument that an email was deleted from an inbox whether accidentally or deliberately without convincing evidence.”

The Applicant’s evidence

10. The Applicant attended the oral hearing, confirmed his details and adopted his two written statements dated 2 October 2023 and 7 November 2023. An interpreter was available for the Applicant’s evidence but was not needed.
11. In cross-examination, the Applicant stated that the personal information given on his application made on 7 September 2020 was his own, including the email address but that he gave an agent the documents required and they completed the form for him without him checking it as he did not know the process for submitting an application. He confirmed that his file had been processed correctly, with things like his name, address and passport number being correct but he did not know about the email address used at the time and when endorsing the form and giving consent, he guessed all the information was correct. The Applicant reiterated that at that time, he did not have much knowledge about the process of filing an application or what things needed to be checked.
12. The Applicant confirmed he was aware of the email address used on the form, but he did not have access to it, it was set up and accessed only by the agent. He subsequently stated that he did not know about this email address used for filing his application, he only asked the agent about it after his most recent refusal by the Respondent in which he used his new email address. When asked to clarify whether the Applicant was aware of the email address used on his application form or not, he stated that at the time he did not have much knowledge of what the agent was filing.
13. When asked how the Applicant would know whether his entry clearance application had been successful, he stated that it would be by e-mail, but he didn’t know that at the time when he was in India and only knows that since being in the United Kingdom and

having made applications here. For his entry clearance application, the agent called to tell him the outcome and gave him his passport.

14. The Applicant used his own email address for his EUSS application and realised that a correct email address was important in May 2022 when he updated the address for his application outstanding at that time with the Respondent.
15. The Applicant found the agent used for his entry clearance application through a recommendation from a friend who knew his parents and was able to use this contact to ask which email address had been used on his initial application for entry clearance and to ask the agent for a written statement about the Applicant not being able to access the email. Although the Applicant stated initially that he was not able to contact the agent after his application, he then said he was able to following the refusal of his skilled worker application. The Applicant had no need to contact the agent before that time and there was no need for the agent to contact him either, although he confirmed that the agent had his telephone number, there was no further contact initiated from them after he arrived in the United Kingdom.
16. The Applicant was asked specifically if he had authorised the agent to receive communication from the Respondent on his behalf in relation to his Tier 4 (General) Student visa, to which he stated that he did not know at that time the process for filing or how a visa arrives, so trusted the agent as he thought they would deal with it. He expressly confirmed that the agent had authority to do everything about that application, including authorisation to contact them about the curtailment of any leave. The Applicant stated that maybe they would do the latter as they had access to the email account, but it would be up to them what to do with such an email.
17. In applications made from within the United Kingdom, the Applicant used different email addresses over time, some of which were personal to him and one, on the application made on 8 May 2023, was his sister's address as she was filing the application for him. Sometimes he didn't get previous emails so asked her, or she asked him, to use her email address. The Applicant updated his email address in February 2023 as he had forgotten the password to the one he previously used in his EUSS application. The Applicant accepted that the style of email address used, with his name and some numbers were similar, but said these were just picked from suggestions made by google. The Applicant denied that he had ever had access to the email address used on 7 September 2020 and this was not a case where he had also just forgotten the password to it.
18. The Applicant was asked about the practicalities of an agent setting up new unique email addresses for every client and having to keep track of them all, rather than using a business email or the applicant's own address; but he did not know why this approach was taken.
19. The Applicant was not able to remember when he first contacted the agent or asked them about the email address used on his application made on 7 September 2020. The Applicant has never asked the agent for access to the email address used, he did not want to check the email was sent from the Respondent as claimed as the refusal letter contained all the details. The Applicant could not explain or show that the original

application for entry clearance was filled in by an agent, he just repeated that he did not know about the filing process.

20. The further written statement dated 8 April 2024 relied upon was by a 'Ms Rikita' (her full name was not given) said to be an educational consultant at Krishiv Migration Service Global for which an address was given. She confirmed that she created a new email address for the Applicant's Tier 4 Student visa application and did not give him access to it on the basis that sometimes when applicants use their main emails for fresh applications they miss correspondence or requests so they tended to make new fresh emails for them to deal with their applications. Following the grant of leave to enter on 8 September 2020, the email account was not accessed and Ms Rikita was not aware of the curtailment notice, not did she inform the Applicant of it.
21. The documents relied upon in this application also included the Applicant's application for administrative review dated 1 June 2023, which included the following statement when asked why the Applicant thought the decision was wrong:

"... I would like to apply for administrative review regarding my decision. The reason for that, firstly Home Office said that my current visa has been expired and secondly my application applied under EU Settlement was refused too. However, I would like to inform that, I did not received any refused emails from previous visa applications. Also Home Office never sent me a refusal letter either. For that reason I always thought that my application is in process. However this year in February I tried to contact EU Settlement team and they told me that they have different contact details for that reason I did not received any email. The email and number used on account was agent's. Also Home Office never sent me a refusal letter by post. So, I have not received emails or a refusal letter from Home Office at the time, that is the reason why I missed my right to review for previous applications. However, after so many attempt I have received reply from agent (I am trying to upload email from agent but does not work) and I did not know that my BRP has been cancelled. I always thought that my BRP has expiry date so, that is still valid. That is the reason I applied Skilled worker visa. However, I would like to request Home Office review my Skilled worker visa and grant my permission to stay in the UK. As I explained the reasons' above how I missed old decision's email's and never received any refusal letter in the post either, for that reason missed all rights to review previously ..."

Submissions

22. On behalf of the Applicant, Mr Gajjar confirmed that the issue was whether the Applicant had rebutted the presumption of service in section 8ZB of the 2000 Order. In essence this was a factual dispute and it was submitted that there was sufficient evidence on the balance of probabilities to show that the Applicant did not have access to the email address used on his original application for entry clearance which was set up and controlled by his agent. The Applicant has been consistent in his account of what happened and it was submitted that it is not unusual for agents to be used to complete forms without the application containing any of their details and for the application to be filled out in the first person. This was similar to the later application

that the Applicant's sister completed for him. The Applicant was also consistent as to his lack of knowledge of the curtailment given that he had made further applications on the basis that he had not overstayed or breached any conditions of his leave and it was not suggested by the Respondent that there was any deception in the most recent application.

23. In his application for administrative review, the Applicant first stated that the email address used for service was created by his agent and he has never had access to it. The administrative review referred to email correspondence with the agent at that time, but the email has not been produced to the Respondent or the Upper Tribunal.
24. The Applicant's claim is supported by the written statement from the agent which should be given weight. The witness was not able to attend the hearing as they are based in India, but it is a short statement which is not contradicted by any other evidence. Mr Gajjar accepted that the written statement was not accompanied by any ID documentation or information about the agent's business, but submitted that that should not affect an assessment of the consistent evidence and even if only little weight is attached to the statement, it would not be fatal to the Applicant's claim.
25. On the agency point, Mr Gajjar submitted that this was also not fatal to the Applicant succeeding in his claim in circumstances where he was not aware of the process of making an application but provided the documents to an agent to do so and let him know of the outcome. It was submitted that although the agent could have contacted the Applicant after this, it was not arguable that any agency extended to communication in 2022 and that it could not have been in the Applicant's contemplation that that original email address would be used to cancel or curtail his leave to remain. The agent was used for the initial application only.
26. There were a number of factors that it was anticipated the Respondent would rely on from the nature of the cross-examination, but Mr Gajjar submitted that the similarity in email addresses and the loss of a previous password did not undermine or erode the Applicant's credibility. It was however accepted that by updating his email address with the Respondent in May 2022, the Applicant was aware that the Respondent needed a current contact email address for him.
27. Mr Gajjar confirmed that there was no evidence that the agent had closed the email address used, passed the details for its use to the Applicant, nor updated the Respondent with a different email address for contact. It was accepted that there was no evidence to show that the Applicant had never used the email address, for example by accessing it and showing the lack of items to or from it, but Mr Gajjar submitted that it was not determinative and there was sufficient evidence without that to establish the Applicant's claim.
28. The Respondent's primary position is that on the correct interpretation of Article 8ZB of the 2000 Order, the Applicant was deemed to have been 'given' notice of the curtailment decision. There is evidence from the Respondent that the notice was sent and received by email, including with a receipt of email delivery confirmation; which is all that is necessary to demonstrate effective service.

29. Secondly, the Applicant has not discharged the burden of proof on him to rebut this to show that the email was not in fact received, on the balance of probabilities. Mr Biggs submitted that the Applicant's evidence should be rejected given that his oral testimony was evasive and inconsistent. For example, he repeatedly failed to answer the question of whether the agent could have contacted him and there was nothing to suggest any misunderstanding of the question asked; and he was evasive as to when he had had contact with the agent, for which there was no clear evidence. Further, the Applicant was vague and inconsistent in his understanding of the importance and use of an email address.
30. The Applicant had failed to give a full explanation of how his application for entry clearance form was completed or by whom, given that there was no indication of the use of an agent on the face of the form. The form gave the impression that the Applicant had completed the form himself, with his personal details, particularly as he confirmed that these were his personal contact details.
31. Mr Biggs also highlighted that the Applicant had no answer to the practical unworkability of the agent's approach to create a new bespoke email address for each client and check each one regularly for each application. He also had no answer to the similarity in all the email addresses used.
32. Further, the Applicant gave no credible explanation for his lack of contact with the agent given that he must have been aware that that email address would be used by the Respondent and understood the importance of a correct email address being on record as he had updated one subsequently. This was particularly so in circumstances where the Applicant had ceased studying and there was a realistic prospect of his leave being curtailed. It was submitted that the Applicant showed indifference about contact with the Respondent.
33. The Applicant also had no proper response as to why he had not asked the agent for access to the email inbox or used its contents as evidence about its use.
34. Mr Biggs submitted that little or no weight should be given to Ms Ritika's written statement. The statement was only produced late and very shortly before the substantive hearing without any good reason for the delay, particularly as the Applicant stated in his administrative review application in June 2023 that he had been in contact with the agent by email by that point. The Respondent was not able to challenge the evidence contained in the statement and in any event, it contains very little information or detail as to what was an implausible and unworkable claim to create new unique e-mail addresses for multiple different clients. Finally, Mr Biggs submitted that it was unclear how the written statement was produced and if, for example, it was written in English as a first language and there is no identity document and no wet ink signature on it. The factors in section 4 of the Civil Evidence Act 1995 are relevant to consideration of the weight to be attached to this evidence.
35. In any event, the Respondent's position is that it did not matter even if the Applicant did not have access to the email address because his agent did. The Applicant confirmed in cross-examination that the agent had authority to accept all correspondence about the application for entry clearance and the grant of Tier 4 leave

as a student, including any curtailment decision which followed. Mr Biggs submitted that that must be right as the Applicant had clearly delegated responsibility for all correspondence from the Respondent to the agent. Service to the agent constitutes notice to the Applicant in accordance with the common law principles in Haywood v Newcastle upon Tyne NHS Trust [2018] UKSC 22. On the Applicant's claim, there was no dispute the agent had access to the email account, which was not denied in her written statement, it was only said that she did not in fact access it or tell the Applicant about the curtailment.

36. The Respondent's final position, as set out in oral submissions by Mr Biggs, was that even if all of the Applicant's evidence was accepted and the agency point was rejected, that at its highest it was not sufficient to rebut the presumption in any event. Mr Biggs submitted that all that could be rebutted pursuant to the 2000 Order was 'receipt' which occurred once an email had arrived in the email inbox of a person or their representative. It was not sufficient, as in Alam for a person to say that he did not read the email or have actual notice of it. Mr Biggs relied on paragraphs 28 to 30 of the decision in Alam for the proposition that receipt means that the thing got to where it was supposed to be and effectively means delivery without evidence of interception.
37. It was accepted as a matter of principle in Escobar that it is possible to rebut the deemed receipt of an email, for example if it is intercepted, although in that case the concept of interception was considered to be broader than Mr Biggs would accept, to include, for example, a third party deleting an email after it had been received in the inbox and before the intended recipient saw it. However, that is not the facts in the present case where the email was received in the inbox, it was simply that nobody checked for it.

Decision

38. It is no longer in dispute that the notice dated 7 January 2022 was properly given in accordance with article 8ZA(2)(d) of the 2000 Order as it was 'sent electronically to an e-mail address provided for correspondence by the person or person's representative', that being the email address contained in the Applicant's application for entry clearance made on 7 September 2020. As such, notice was deemed to have been given and permission was not granted for the Applicant to challenge that conclusion. The sole issue is whether the Applicant has rebutted this.
39. The Applicant's claim does not rely on any alleged interception of the email such that despite being received in the inbox, it was somehow removed or deleted from there by a third party (such as the claim in Escobar); but that the email address used on the Applicant's application form was one to which he never had access. It is not therefore necessary in this application to consider further the meaning or breadth of 'interception' in a case where service of a notice has been effected by email. It is sufficient, that as in Escobar it is in principle possible to rebut the receipt of notice given by email.
40. It is theoretically difficult to see how the Applicant's claim, taken at its highest, could rebut the presumption of receipt in circumstances where there is no challenge on the facts to the email having been received in the inbox (and not intercepted from there); nor that the address to where it was sent was one included on the application and said to

be the personal address of the Applicant, who made a declaration that all of the information was correct to the best of his knowledge and belief. The Applicant's claim goes beyond any concept of interception of the notice as set out in Alam and Escobar, the claim is really in essence, that the wrong email address was used - it was not, contrary to what was on the face of the application in September 2020, the Applicant's email address.

41. In my view this would however go beyond what could permissibly be rebutted in terms of the presumption in article 8ZB of the 2000 Order given that there is no dispute that the notice was sent in accordance with article 8ZA of the same, to an email address provided for correspondence, even if that email address was filled in by an agent rather than the Applicant himself. It is not in my view possible to rebut the presumption of notice by simply saying that after all, the Applicant, or his agent, had given the wrong contact details to the Respondent. The Applicant's claim is more akin to a situation where there were no steps taken to read the email, either by the Applicant or his agent; which for the reasons in Alam would not be sufficient as actual notice is not required.
42. In any event, even if as a matter of principle the presumption could be rebutted by the Applicant if he established that he had never had access to the email address on his application form, I do not on the facts find that he has done so on the balance of probabilities for the following reasons.
43. First, there is nothing on the face of the application form itself to indicate that it was completed by an agent at all. There are no details of any agent included and the answers given are in the first person, using 'I' rather than in the third person to refer to the Applicant. The declaration at the end of the form was completed by the Applicant and confirmed the accuracy of the information contained within it, including that the email address used was a personal one. If the declaration had been completed diligently, the Applicant must have been aware of the email address given and that he was confirming it was his (rather than an account set up by an agent which he had no access to – which could not have constituted a personal email address). The Applicant's claimed ignorance in the process does not detract from that.
44. Secondly, I found the Applicant's evidence as to what happened when the application was made to be unclear. At first he appeared to confirm that he had checked all of the information on the form and was aware of the email address used, but then that he had checked some of the information but was not aware of the email address and in questioning simply kept repeating that he did not know much about the filing of an application at that time or the use of an email address for correspondence about it. Overall, I did not find the Applicant's oral evidence to be credible; it was frequently vague, inconsistent, or otherwise he was unable to give reasonable explanations for the detail of what happened.
45. Thirdly, it is not clear from the application for administrative review whether the claim that the email address used belonged to an agent was in relation to his initial application for entry clearance in September 2020, or in relation to his later EUSS application; or both. The way the form was written appears to be that the Applicant had not received either the notice of curtailment or the EUSS refusal because of an email address being used that did not belong to him, despite the fact over a year previously in May 2022 he

had updated his contact details with the Respondent for his earlier application as, on his evidence, as he recognised the importance of an email address he could access. It is far less believable and plausible that the Applicant had not, on his account, received two different decision letters because of the use of two different agent's email addresses on them to which he had no access and no communication from the agent about either.

46. Fourthly, there is no contemporaneous evidence from the agent as to what happened. The application for administrative review referred to email correspondence about this which has not been submitted to the Respondent or the Upper Tribunal. There is therefore no record of the initial conversations, inquiries or explanation about the email address. The Applicant was unable to give any account of what happened in oral evidence.
47. Fifthly, I attach no weight to the written statement by Ms Ritika, produced over a year after the initial decision letter and almost a year after the Applicant said he had further contact with her. The written statement contains very little detail as to the author – it does not include their full name, details of their work as an agent and is not accompanied by any identification documents. Further, it is unknown as to whether the author wrote the statement themselves and if so, whether it was written in English as a first language or translated (bearing in mind the agent is based in India). It is not in dispute that the author is based in India and did not therefore attend the hearing in London, such that there was no opportunity for the evidence to be challenged by cross-examination or otherwise.
48. In any event, in substance, the content of the statement is also very limited. It does not include any details as to the intervening contact with the Applicant or any checks on the inbox further to such contact. There is only a brief reason given as to why the email address was created and no explanation as to the practical unworkability of doing so for every individual applicant. Nor is there any explanation as to why either that email was not closed down after the application was successful, or access to that email was not given to the Applicant, or that the Respondent was not updated with an actual personal email address for the Applicant for any further correspondence. At its highest, the written statement appears to be an admission of poor conduct in relation to the Applicant's application for entry clearance and accepting responsibility for the problem; for which the Applicant should have recourse against the agent, but with no evidence of any formal complaint about it to them or any professional body.
49. Sixthly, the Applicant could not give any reasonable explanation of why he did not ask the agent for further information about the email account or access to it; either to check that the curtailment decision had been delivered as claimed or to provide a copy of it to show its use, or lack of use since the application and grant in September 2020. This is further information which it would be reasonable to expect the Applicant to have submitted in support of his claim, but which he failed to do.
50. Finally, I attach very little weight to the similarity of email addresses used and the Applicant forgetting a previous password and needing to change his email account on record with the Respondent for a different application. These matters are more circumstantial than anything of significance; but are consistent with the Applicant otherwise failing to establish his claim to not having access to the email account;

particularly taken together with the uncertainty of whether the Applicant claimed that one or two different agents had used email accounts not actually belonging to him such that two decision letters were not received, as per the administrative review request; as well as the additional admission that on one application he used his sister's email address.

51. For these reasons, the Applicant has not established on the balance of probabilities that contrary to his own declaration of a correct personal email address being given on his application form in September 2020; that was not in fact an email address to which he had any access at all.
52. In the alternative, I would find in any event that even if the email address given by the Applicant in his application in September 2020 was set up and entirely under the control of his agent; that sending the notice of curtailment to that email address would in any event be sufficient for the presumption in article 8ZA and 8ZB to arise. It was an 'e-mail address provided for correspondence' about the application, whether by the Applicant or his agent and at its highest, the Applicant's claim that he had no access would not be sufficient to rebut the presumption of receipt given that there is no dispute that the email was received by the agent (on the Applicant's claim). Again, the claim that the agent had not accessed the inbox or the email itself for actual notice; nor communicated it to the Applicant would not be sufficient for the reasons given in Alam. Service to an agent or representative is sufficient for service to an applicant, or in this case, receipt by an agent of an email arriving in their inbox, to an address they gave for such correspondence; would be effective as service to or receipt by the individual; subject to rebuttal. However, in this case, there is no claim to rebut the evidence that the email was delivered to the address given for correspondence and no claim of interception.
53. Whilst Mr Gajjar submitted that no relationship of agency could have persisted beyond the grant of entry clearance, nor been in the contemplation of the Applicant; the Applicant's oral evidence on this directly contradicted the submission. The Applicant expressly confirmed when asked that he had authorised the agent to undertake all actions in relation to his application for entry clearance, including receiving correspondence as to the curtailment of any leave. There was nothing to suggest that the Applicant did not understand the question and contrary to many of his other answers, this one was unequivocal and without any caveat as to him not understanding the process of filing an application. The Applicant therefore confirmed an ongoing relationship with the agent and further that she could have contacted him if needed (although he said she had no reason to do so).
54. For all of these reasons, the application for Judicial Review is dismissed.

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