



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

Appeal Number: IA/01247/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 11 July 2014**

**Determination**

**Promulgated**

**On 15 July 2014**

**Before**

**UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**MOHAMED FAZLI ABDUL FUARD**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms J Heybroek, Counsel

For the Respondent: Mr. G Saunders, HOPO

**DETERMINATION AND REASONS**

1. The Secretary of State has been granted permission to appeal the decision of First-Tier Tribunal Judge Prior in which he allowed the appeal of the appellant under the Immigration Rules.

2. The appellant is a citizen of Sri Lanka, born on 17 September 1983. On 2 February 2013 he applied for leave to remain in the UK as a Tier 4 (General) Student under the Points Based System. The application was refused on 7 December 2013 because he failed to comply with a condition attached to the grant of leave to enter which was granted on 27 August 2010. The condition was that Section 50 of the Borders, Citizenship & Immigration Act 2009 prohibited him from study other than at the institution that the Confirmation of Acceptance for Studies Checking Services records as the student sponsor. In this case the appellant had switched his study with Oxford College International, which was the institution for which he had been granted entry clearance to the Britannic International College without informing the Secretary of State.
3. The judge allowed the appellant's appeal for the reasons set out at paragraph 10 as follows:

*Section 50 of the 2009 Borders Act is no more than an enabling provision which empowers the imposition, by the Respondent, upon leaves to remain in the United Kingdom of conditions restricting studies. The Immigration (Leave to Enter and Remain) Order 2000 governs generally the mechanics whereby conditions are imposed and reads as follows (paragraph 5): "An entry clearance shall have effect as leave to enter subject to any conditions, being conditions of a kind that may be imposed on leave to enter given under Section 3 of the Act, to which the entry clearance is subject and which are endorsed on it." The Act referred to is the Immigration Act 1971 into which there was inserted (in Section 3) the enabling provision of Section 50 of the Borders Act that I have referred to. Paragraph 5 of the Immigration Order 2000 provides that conditions imposed on leave to enter are to be imposed by endorsement on the entry clearance which shall have effect as leave to enter. The only evidence before me of the relevant entry clearance granted to the appellant was the UK entry clearance stamp, referred to above, in the appellant's extract from his passport. The Refusal Letter made no reference to any other form of entry clearance, that is to say any standard letter or document issued to the appellant and constituting itself as "An entry clearance." It was therefore my conclusion that there was a single form of entry clearance granted to the appellant and that that entry clearance contained no reference to a condition governing the appellant's studies in the United Kingdom with the consequence that, in law, no such condition was imposed on the appellant's leave to enter so accordingly there could be no breach by the appellant of the condition to which he was not, in law, subject. It follows that I was not satisfied that there was any breach of condition by the appellant in the terms of paragraph 322(3) of the Rules.*

4. At the hearing Mr. Saunders relied on the decision of the Administrative Court in **Afzaal, R (on the application of) SSHD [2014] EWHC 2215 (Admin)**, paragraph 46 where Mr. Robin Purchas QC, sitting as a Deputy Judge of the High Court held

*In the context of the relevant grant of entry clearance in accordance with the Immigration Rules that was a clear indication on the face of the vignette that the conditions include, as required under the Rules, limitation to the particular identified sponsor body. No doubt the reference could be made more clearly, not least by the description of the endorsements as conditions rather than under the rubric observations. However, that does not, in my judgement, lead to a conclusion that the endorsement was ineffective for the purpose of the 2000 Order.*

5. The decision put Ms Heybroek in some difficulty.
6. In light of this judgement, I find that the judge's decision is flawed.
6. The judge's decision allowing the appellant's decision cannot stand. I remake it and dismiss the appellant's appeal.

Signed  
Upper Tribunal Judge Eshun

Date