Upper Tribunal
(Immigration and Asylum Chamber) **Appeal number: IA/48952/2013**

THE IMMIGRATION ACTS

Heard at Field House, London	**Determination Promulgated**
On 3 December 2014	**On 5 December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant
and

SHAVIGNAN SANTHAKUMAR

Respondent

Representation:
For the Appellant: Mr M Shilliday, Home Office Presenting Officer
For the Respondent: Mr P Turner, instructed by Advice Wise Solicitors

DETERMINATION AND REASONS

1. Whilst this is an appeal by the Secretary of State for the Home Department, for convenience I will refer to the parties in the determination as they appeared before the First-tier Tribunal

2. The appellant is a national of Sri Lanka. His application for leave to remain in the UK as a Tier 4 (General) Student Migrant was refused by the respondent on 5 November 2013. His appeal against that decision was allowed by First-tier Tribunal Judge Cohen in a decision dated 5 September 2014. The Secretary of State now appeals with permission to this Tribunal.

3. There are two grounds of appeal to the Upper Tribunal. Upper Tribunal Judge Renton, who granted permission to appeal, decided that the second ground has no merit but granted permission on the basis that the first ground is arguable. The second ground relates to the First-tier Tribunal Judge's findings on the substantive issues. The Judge accepted that the third party sponsor is the appellant's mother. I am satisfied that the First-tier Tribunal Judge considered all of the oral and documentary evidence and gave sufficient reasons for his finding that the sponsor is the appellant's mother and I agree that this ground has no merit.

Error of Law

4. The Secretary of State contends in the first ground of appeal that the First-tier Tribunal Judge did not have jurisdiction to determine the appeal because the appellant made his application after the expiry of his leave to remain and that the resulting decision did not therefore give rise to an appeal under section 82 (2) of the Nationality, Immigration and Asylum Act 2002. The Judge was aware of this issue and noted; *'it has previously been accepted that the appellant's application was submitted in time and I concur with that conclusion'* [5]. It appears to me that the Judge was referring to the fact that the Duty Judge admitted the appeal. However I note that the Duty Judge's note simply says 'ok to proceed' and that no reasons are given for this decision. I also note that the First-tier Tribunal Judge said at paragraph 2 of the determination that the appellant's leave to remain as a student expired on 30 September 2013 and that his present application was submitted on 3 October 2013.

5. Mr Shilliday submitted that paragraph 34G of the Immigration Rules provides, inter alia, that the date on which an application is made is the date of posting or the date an online application is made. He submitted that the application form submitted by the appellant was posted and was received by the Secretary of State on 4 October 2013 which means that the deemed date on which it was posted is 3 October 2013. He accepted that it appeared that the fee was paid on 26 September 2013 but said that there was no evidence that the application was made online on that date. He submitted that the application was posted because the photographs were attached to it by sellotape and it had the signatures of the appellant and his representative. He submitted that the appellant completed the appellant on the computer, printed it out, signed it and posted it and

that there is nothing on the respondent's file to show that the application was submitted online.

6. Mr Turner submitted that there was evidence that, as well as posting it, the appellant had also submitted the application online in the form of the letter from the appellant's then representative, the visa and immigration adviser from the appellant's University. That letter, dated 18 November 2013, confirms that the appellant completed the application online on 26 September 2013 and that, in accordance with information from the Home Office to all student advisers, the appellant had 15 days to post the supporting documents. He submitted that the application form itself shows that the fee was paid on 26 September 2013 and that the online form was submitted then. This was apparent, in his submission, from the WorldPay reference and notification number on the form. He submitted that, in any event, the effect of the decision in Anwar & Anor v SSHD [2010] EWCA Civ 1275 was that the appropriate forum for the determination of this issue was the First-tier Tribunal. He submitted that the respondent did not appear at the First-tier Tribunal hearing to argue this issue.

7. I accept that jurisdiction was a live issue before the Judge and that he did not give reasons for his finding that the appellant's application was submitted in time. This may amount to an error of law but I am satisfied that it was not a material error as there was sufficient evidence before the Judge to make this finding. The Duty Judge had previously accepted that the appeal was valid and allowed it to proceed. There was evidence from the student advisor, who was the appellant's representative at the relevant time, that the application was submitted online on 26 September 2013 and that, in accordance with normal practice, the application form was posted thereafter along with supporting documents. The application form itself gives a WorldPay payment notification number which was not simply typed onto the form but which is printed on the top and bottom of the first page of the form and at the bottom of pages 11, 12 and 13 of the form (A of the respondent's bundle). As well as the declarations and signatures on page 12 there is a separate declaration at pages 9 and 10 which require confirmation at page 9. It appears that pages 1-9 were submitted online and pages 11-13 were added to the posted application. I consider that this evidence is sufficient to justify the finding made by First-tier Tribunal Judge Cohen that the application was made in time and that the tribunal did therefore have jurisdiction. Any error he made is therefore not material.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

Signed Date: 4 December 2014

A Grimes
Deputy Judge of the Upper Tribunal