Case No: JR-2023-LON-001540

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

JUDGMENT DATE: 20th August 2024

Before:

UPPER TRIBUNAL JUDGE RIMINGTON

- -

Between:

THE KING
on the application of
SRI VENKATA TARUN KUMAR KATTA

Applicant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

- -

Ms A Selvakumaran
(instructed by Hubers Law), for the applicant

Ms H Masood
(instructed by the Government Legal Department) for the respondent

Hearing date: 29th May 2024

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J U D G M E N T

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Judge Rimington:

1. The applicant was granted permission to apply for judicial review by UTJ Smith following an oral renewal hearing on 27th November 2023. The applicant challenged the respondent's decision of 2nd March 2023 which refused his application (dated 12th September 2022) for leave to remain as a skilled worker on the basis that it was made "out of time" following

a curtailment of his previous grant of leave to remain by 24th January 2022 by email. This decision was maintained on 21st April 2023 following an administrative review.

2. The applicant is an Indian national and on 13th September 2019 was granted entry clearance as a Tier 4 (General) Student. He entered the UK on 27th September 2019. The respondent asserts that an email attaching a curtailment notice curtailing leave to expire on 24th January 2022 was sent to the applicant's email address on 25th November 2021. In essence, the applicant maintains he did not receive that curtailment notice to his email address [SK]@gmail.com.

3. On 29th September 2022 (following the application) the applicant's intended sponsor received a right to work from the Employer Checking Service (ECS).

4. On 4th January 2023, the Home Office contacted the applicant requesting an Immigration Skills Charge (ISC) payment and the applicant's legal representative was subsequently advised that the applicant did not have valid leave thus was required to make a payment.

5. On 2nd March 2023 the skilled worker application was refused, and on 21st April 2023 the decision maintained.

6. On 22nd May 2024 a subject access request was made to the Home Office, albeit that this, when received, did not include a copy of the curtailment letter.

7. This judicial review claim was filed on 19th July 2023.

8. On 22nd September 2023 the applicant made a data request to Google for details of all emails received on 25th November 2021, and especially from [ML]@homeoffice.gov.uk.

9. On 21st March 2024 permission was granted by the Upper Tribunal (IAC) senior legal manager to admit

   (1) the response to the detailed grounds of defence,

   (2) witness statement dated 10th March 2024 explaining the data from Google, and

   (3) the agreed schedules of fact dated 4th March 2023.

   There was no expert evidence.

Legal Framework

10. Section 4 (1) of the Immigration Act 1971 states:

> "***Administration of control.***

*(1) The power under this Act to give or refuse leave to enter the United Kingdom shall be exercised by immigration officers, and the power to give leave to remain in the United Kingdom, or to vary any leave under section 3(3)(a) (whether as regards duration or conditions) **[**or to cancel any leave under section 3C(3A)**]**, shall be exercised by the Secretary of State; and, unless otherwise **[**allowed by or under**]** this Act, those powers shall be exercised by notice in writing given to the person affected, except that the powers under section 3(3)(a) may be exercised generally in respect of any class of persons by order made by statutory instrument.*

11. In so far as material and with underlining for emphasis of the relevant sections, the Immigration (Leave to Enter and Remain) Order 2000 (as amended) states:

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

8ZA. (1) A notice in writing –

(a) giving leave to enter or remain in the United Kingdom;

(b) refusing leave to enter or remain in the United Kingdom;

(c) refusing to vary a person's leave to enter or remain in the United Kingdom; or

(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) Where no postal or e-mail address for correspondence has been provided, the notice may be sent –

(a) by postal service to –

(i) the last-known or usual place of abode, place of study or place of business of the person; or

(ii) the last-known or usual place of business of the person's representative; or

(b) electronically to –

(i) the last-known e-mail address for the person (including at the person's last-known place of study or place of business); or

(ii) the last-known e-mail address of the person's representative.

(4) Where attempts to give notice in accordance with paragraphs (2) and (3) are not possible or have failed, when the decision-maker records the reasons for this and places the notice on file the notice shall be deemed to have been given.

(5) Where a notice is deemed to have been given in accordance with paragraph (4) and then subsequently the person is located, the person shall as soon as is practicable be given a copy of the notice and details of when and how it was given.

(6) A notice given under this article may, in the case of a person who is under 18 years of age and does not have a representative, be given to the parent, guardian or another adult who for the time being takes responsibility for the child.

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 the United Kingdom;

> *(b)* ***where the notice is sent by fax, e-mail, document exchange or courier, on the day it was sent****.*
>
> *(2) For the purposes of paragraph (1)(a) the period is to be calculated excluding the day on which the notice is posted.*
>
> *(3) For the purposes of paragraph (1)(a)(i) the period is to be calculated excluding any day which is not a business day.*
>
> *(4) In paragraph (3) 'business day' means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971****(1)*** *in the part of the United Kingdom to which the notice is sent.*
>
> ***(emphasis added)****".*

12. A bundle of authorities was provided by the parties and in particular reference was made to **R (Alam and Rana) v Secretary of State for the Home Department [2020] EWCA Civ 1527** specifically [29] to [32].

The Grounds of Judicial Review

13. The applicant set out that on 29th November 2021 he received an email in his spam box from [ML] of the respondent's Notifications and Cancellations Team (Sheffield) enclosing a curtailment notice. Both the email and attachment were addressed to M Pendyala and recorded that the recipient studied at the University of Northumbria. That was not the applicant.

14. On 12th September 2022 the applicant applied for a skilled worker visa and on 23rd September, the applicant's prospective employer used the respondent's ECS which showed a positive response that the applicant was permitted to work for a maximum of twenty hours per week during term time.

15. It was submitted that the onus was on the respondent to prove effective giving of notice as per [28] of **Ali v Secretary of State [2013] UKUT 00144** and also [31] of **R (on the application of Alam) v Secretary of State [2020] EWCA Civ 1527**. Notice did not require the recipient to have read and absorbed the contents, but, in respect of service by email, it would only be effective where there is "the arrival of the email in the inbox of the person affected", see [29] to [30] of **Alam** and that until the decision was communicated it will have no legal effect, **R (on the application of Mahmood v Secretary of State for the Home Department (effective service – 2000 Order) [2016] UKUT 57**, [28]. Until notice is given the decision would not comply with a mandatory requirement as per **R (on the application of Chaparadza) v Secretary of State for the Home Department [2015] EWHC 1209 (Admin)** at [20].

16. The burden was on the respondent to evidence service on the applicant in accordance with Section 4(1) and the 2000 Order and the notice served on 29th November 2022 was not addressed to the applicant and concerned an entirely different individual.

17. The respondent provided the notice he had purported to serve with a pre-action response and the Tribunal was invited to bear in mind that the ECS recorded the applicant as being lawfully able to work, and secondly that the applicant received someone else's curtailment notice.

18. The applicant put forward that the applicant did not receive the curtailment notice and as such the curtailment notice was not properly served. The exercise of the respondent's power to curtail a person's leave must be communicated in writing as per Section 4(1) of the Immigration Act 1971 and the onus is on the respondent to prove effective giving of notice on the application of **Alam**. Until the decision is communicated it will have no legal effect. Service by email is subject to rebuttal, **R (on the application of Mahmood) [2016] UKUT 57**, specifically [38].

19. Where a method of sending notice within Article 8ZA(2) or (3) has been followed, it was accepted that the burden falls on the litigant to show he has a real prospect of establishing that the document was not received and the litigant would need to do more than show that the notice did not come to his attention but to establish how he proposed to show it was never actually received. However, it was clear from the chronology of the claim that it was not clearcut that the applicant was correctly served. There was a lack of corroborating evidence from the respondent to demonstrate it was curtailed, for example, by the underlying documentation.

20. The applicant's case was that he did not receive the email of 25th November 2021 and the ECS confirmed the applicant had a right to work. It highlighted the possibility the curtailment letter was not correctly served and the applicant's right to work not curtailed or cancelled. It was only in January 2023 that the Home Office contacted his previous representative requesting an ISC payment and notifying them in February 2023 that the applicant was without valid leave to remain.

21. Additionally an email was sent to the Home Office on 30th May 2023 noting that the curtailment letter was not included in the subject access request and these issues have not been engaged with in any substantive way.

22. A further issue in the Detailed Grounds of Defence (DGD) is that the respondent now claimed the curtailment notice was sent "on behalf of the NotificationsandCancellationsTeam@homeoffice.gov.uk instead of by [ML]@homeoffice.gov.uk. It is unclear whether this email was sent from a different email account. The respondent provided an email copy attached to the acknowledgement of service which shows a name at the top of "[IB]", a GLD case handler and not either of the account owners purporting to have sent the curtailment notice. All this supported the

position that the applicant did not receive the curtailment notice. The applicant did not have access to the respondent's data.

23. UTJ Smith did not oppose the application to adduce the further evidence at this stage, that is the data produced by the applicant, and the Gmail data was not opposed by the respondent and admitted on the part of the Tribunal and as part of the respondent's DGD, no additional email evidence was provided to rebut the contents of the data. The DGD raised the possibility that the applicant deleted the email prior to obtaining the data from Google but this was a matter for the respondent to raise at the substantive hearing.

24. The applicant received the email addressed to M Pendyala and had provided approximately 15+ GB of email data directly from Google spanning a number of years where there was no evidence of an email of 25th November 2021 being received into the applicant's inbox.

25. The email data received from Google states that it includes inbox, spam and trash folders and the Google data served is reliable evidence which discharges the burden that the applicant had not received the email on 25th November 2021.

26. The applicant did not have an expert report primarily because this would be evidence that postdated the decision. Additionally, it was understood that further to number 12 of the 'agreed facts' the applicant was not required to provide an expert report. The absence of such given the potential cost to an applicant without permission to work and the limited likelihood of such a report being admitted should not be held against the applicant. It remained open to the respondent to serve a delivery receipt.

27. As per **Alam and Rana** the applicant had taken proactive steps to establish the document had not been received although he was not a data expert and had no access to the respondent's email account and thus had not substantively addressed how it had occurred that he did not receive the notice. On the individual facts of his case, i.e. Google data corroborating his account, the Tribunal was invited to find the respondent's decision was not sustainable.

28. The respondent argued that although there was no need for the applicant to have read or been aware of the contents of the email of 25th November 2021, that was beside the point as the applicant's claim was that he never received it. The statement relied on in **Alam** was obiter not least that **Alam and Rana**'s claims related to postal service. Alam relied on a witness statement in which he made only a bare assertion that if someone else had signed for his curtailment letter at his address they would have informed him and there was no evidence that Mr Alam had made enquiries as to whether a letter was received around the relevant time. Neither party had provided anything "positive to rebut the SSHD's case" [46], or "to show a real prospect of proving that the notice was not delivered" [56].

29. By contrast this applicant once he received the curtailment letter and email in August 2023, contacted Google directly on 22nd September 2023 and made a data request for details on emails received on 25th November 2021. By contrast with Mr Alam's position, the applicant here made reasonable enquiries as to whether the letter was received at the relevant time and having provided the data which does not show receipt of the email of 25th November 2021 had done more than simply made bare assertions.

30. The claim could be distinguished from **Mahmood** in which the Secretary of State provided various extracts from the GCID notes which recorded various stages of the curtailment notice being prepared, served, and recorded as served, including corroboration of the name of the person who made and served the decision and the time and date of service. The Tribunal found this to be "sound evidence to conclude that the curtailment notice had been sent" as an attachment to an email and there was "no contrary evidence contained in the GCID record" [42]. By contrast, here the GCID notes belonging to this applicant did not record a curtailment decision in 2021; it recorded that on 25th February 2020 curtailment consideration was made to curtail leave remaining and then skipped to 25th January 2022. The decision maker stated in the GCID notes that the email was sent at 16:33 but the email served attached to the AOS states it was sent at 16:43 instead. Contrary to **Mahmood** this applicant's GCID record somewhat contradicted the service email relied on by the respondent, at least regarding the time of service.

31. Also by contrast with **Mahmood** the applicant relied on data from the email host and there was no similar evidence before the Tribunal in **Mahmood**.

32. The Tribunal should be aware of the inconsistent nature of email accounts, for example, the respondent's email account has a size limit, a security setting that will bounce back certain emails or attachments and this is generally standard practice to prevent potential data breaches or viruses. Receiving one email from a sender did not imply that all other emails from that sender would be safely received and failed to take into account multiple factors including file size, file format, security restrictions, whether Gmail's virus scanner is affected, whether there is an interference to the connection or server at an inopportune moment, to name a few examples. What is known for certain is Google's own evidence confirmed the email was not received. As stated in **Alam** at [29] to [30] service by email is effective where there is "the arrival of the email in the inbox of the person affected". There was no such arrival in this case.

33. The notice was ineffective and the applicant had extant leave at the time the application was made. It followed that the decision to refuse the applicant under paragraph SW2.2 and 39(e) of the Immigration Rules was irrational and unlawful. The application was not 'out of time'.

The Hearing

34. At the hearing before me I gave permission for the applicant to be cross-examined bearing in mind, although unusual in judicial review proceedings the applicant had produced a witness statement confirming that he had not received the email attaching the curtailment notice and that was challenged by the respondent. He was specifically asked whether he needed an interpreter and confirmed that he did not.

35. I refer to his evidence in my conclusions where I consider it to be relevant as his evidence was recorded. He did confirm that the email address used by the respondent was correct and that this was the email he had used in his Tier 4 application in 2019 and no one else used it. He did confirm that he had another email address in Outlook. He did state that he was vigilant in checking his inbox but only checked his spam and trash inboxes every two to three days. He confirmed at paragraph 8 of his witness statement that he acknowledged the possibility of missing an email. It was put to him as someone with a Gmail account he would know that after a period of time emails and trash and spam were automatically deleted but not general emails.

36. The applicant stated that he did not set up any automatic deletes but agreed he had said nothing in his witness statement about what the email settings were and in relation to deletions. It was put to the applicant that there was nothing within the correspondence from Google to confirm that the data included everything historically including all historic emails in spam and trash as at the date of the download. He agreed that the email from Google of 25th September 2023 left that issue open. Initially when asked whether he received the email from [ML] on 29th November 2021 he stated that he did not spot it but after receiving the rejection from the Home Office he trawled through and found it. It was put to him that he had said that he checked his emails regularly and he then stated that this was not his name or email and so he just ignored it. He then stated he was not sure whether he checked it or not on the same day but it was after receiving the rejection he checked everything. When asked why he did not spot/open this email, he agreed that it did not reference Mr Pendyala in the subject line.

37. The applicant confirmed in his witness statement that it was his dream to come to the UK to study and he was granted a visa in 2019 to study computer science and he started the course on 19th September 2019 due to end on 13th November 2022 but within less than six months East London College withdrew the sponsorship because he had not paid the fees despite the confirmation that he had funds by way of a loan in the Visa Application Form. He stated that his mother became ill so they needed the money for medical treatment. He also gave evidence that the University of East London told him he must either look for another visa or leave but at the time he could not because it was Covid. This was in February 2020. It was put to him that that was during a period when travel was permitted. He denied that he had deleted the email.

Submissions

38. In submissions Ms Selvakumaran accepted that it was not possible to argue that the email and letter had not been sent. The question was delivery.

39. I was referred to **Alam** and she acknowledged that [33] was intended for permission considerations but it was followed in **Escobar v Secretary of State** [2024] EWHC 1097 (Admin) where at least the general principles of LJ Floyd's comments albeit obiter were followed. At [30] it acknowledged it was possible for an email to be intercepted but it was accepted that there were other possibilities as to what might happen to the emails. Paragraph 30 acknowledged it was possible for an email to be intercepted and [33] to [36] addressed the rebuttal of the presumption of service. By contrast with **Escobar** the applicant in this matter had contacted Google directly and asked the company to find his email from [ML] of the Home Office to confirm whether he had received anything. The applicant gave evidence that the Home Office email to Mr Pendyala came through the spam account. The email on 29th November in relation to Mr Pendyala came through and it was the applicant's evidence that because of the subject line he did not check it or skim for anything important.

40. There was no access to the respondent's data and there should be a delivery receipt attached. That was referenced in one sentence by the Cancellation and curtailment of permission guidance at page 8.

41. This was a privately paying applicant who was prevented from working and this contributed to the lack of expert evidence. The lack of the report should not prejudice the applicant. This applicant had stayed in the country and thought he had had the right to work and thought he had valid leave to remain.

42. The applicant did not believe his emails would automatically delete and he had not set up settings to do that. He had located the emails in 2023 although it was accepted it did not show in Google data what was there in 2021 and it could not be known for certain if it did include a Home Office email or notice as a request was not made until a year and a half later. The applicant did not remember seeing anything with his name on. He had not just simply relied on non-delivery but taken reasonable steps to establish the position. The annotations on the Google data were from Counsel in an attempt to assist the Tribunal and to show how the Google data was obtained. The folders came as one joint folder from Google and it was not clear whether the email dated 29th November was in the spam folder or not.

43. Ms Masood referred to the legal framework and submitted that there was nothing in **Escobar** to contradict that the giving of notice did not require the applicant to have read the content. It was possible for the email to be delivered and for the applicant not to notice or read it but that did not discharge the burden of rebutting receipt. I was referred to [31] of **Alam**. In this case there was convincing evidence of the expectation of receipt and the burden would not be lightly discharged. The applicant drew on [29] of **Alam** but that was not the test. It was clear from [33]

that the Court of Appeal was setting out the test the court should apply when considering whether to grant permission and whether there was arguability in relation to a particular fact. The question in this case which was a substantive hearing was simply whether the applicant had discharged the burden on him on the balance of probabilities of proving that he was not given notice.

44. It was clear the curtailment notice was sent. It was the applicant's contact email. There was a copy of the email and the curtailment notice in the bundle. It was sent to the correct email address and in accordance with paragraph 8ZA. He was deemed to have been given notice unless the contrary was proved and so the burden was on the applicant to prove he was not given notice. He was saying that the notice did not arrive in his email system but there was convincing evidence leading to receipt and further an email was sent to the correct email address by the same caseworker shortly afterwards on 29th November 2021. In the face of convincing evidence the burden is all the higher and he needed to show particularly persuasive evidence that he had not received the email. The applicant relied heavily on the Google data but the email from Google left open the critical question of what was encompassed in the data, i.e. was it complete and what did it include, and that was not asked of Google. Further, the applicant could have provided computer expert evidence from someone familiar with the Gmail system and again had not. That was fatal to his case.

45. The fact that the screenshots produced by the applicant state that all emails were included as on record at that point was insufficient to confirm that this data did include everything historically received by the applicant.

46. It was feasible the email was deleted by the applicant. He was someone that no longer was studying and therefore complying with his visa. He had stated that when the sponsorship was withdrawn Covid had arrived and he could not travel but judicial notice should be taken of the fact that during the pandemic there were periods of time when travel resumed. In the GCID notes at page 266 there was a notification text demonstrating that he was excluded from his studies and advised to leave the UK. There were also very serious question marks because despite him having stated in his visa application that he had the funds to study he did not in fact pay his tuition fees. This was obviously someone who wanted to stay and it was reasonable to conclude that he simply deleted the email.

47. The applicant appeared to accept that there was no evidence that the data contained all the historic emails and the agreed schedule of facts at paragraph 9 confirmed that that was the position.

48. The Google data did not show all the data and there was no evidence to conclude reliably that the Google data was complete and included all emails that the applicant ever received as at November 2021. The email in relation to Mr Pendyala was not sufficient in itself to show that Google data was complete. There was no evidence on which to reliably proceed on that basis. It was also feasible that the email from the Home Office on

25th November ended up in a spam folder and not noticed and auto deleted. The applicant states that he did not activate settings on his email such that emails were deleted but there was no evidence that the Pendyala email was in the spam folder (and thus automatically deleted) and the applicant did not show what his settings were. The applicant also said that once he received the Google data he spotted the email was in his spam folder and it would have been easy to show a screenshot and Google data but he did not.

49. The final significant piece of evidence was he stated he regularly checked his inbox and his spam box (although not as frequently) but his oral evidence in relation to the email of 29th November at the start of his oral evidence showed that he was not as careful on checking his emails at the start of evidence.

50. It is simply not credible that he would have skimmed past an email from the Home Office which states that it is an important notice in the strapline. It is not credible that that email would have been skipped over so he was not as careful as he suggested. The only inference is that he missed this email.

51. The applicant was recalled and confirmed that he had previously received emails from the Home Office. In response Ms Selvakumaran stated that it was not possible to see from the Google data whether that included items deleted pre-2022 although his evidence was that he believed any notice would have come into his inbox and that would not have been automatically deleted. There was a request made to Google data to specifically locate emails from [ML] and that was similar to a subject data request and should include everything.

Conclusions

52. The agreed schedule of facts were as follows:

> *"1. The Notice of Cancellation in respect of Mr Katta was sent at 16:43 on 25 November 2021 to [SK]@gmail.com;*
>
> *2. The notice in 1, above, was sent by [ML], using e-mail address [ML]@homeoffice.gov.uk 'on behalf of' NotificationsandCancellationsTeam@homeoffice.gov.uk;*
>
> *3. The Notice of Cancellation in respect of M Pendyala was sent at 09:57 on 29 November 2021 to [SK]@gmail.com;*
>
> *4. The notice in 3, above, was sent by [ML], using e-mail address [ML]@homeoffice.gov.uk;*
>
> *5. It is agreed that the notice in 3, above, was received by the Applicant;*
>
> *6. It is agreed that the e-mail in 3, above, was received by the Applicant and is contained within the Google data.*

7. The Applicant made a request to Google asking for data in respect of his emails ('the Data');

8. Google confirmed that the Data provided includes emails contained in the inbox, spam and trash folders as at the date that the Data was disclosed;

9. There is no evidence that the Data contains emails which were deleted prior to the Data being provided to the Applicant;

10. The Data does not show an email received on 25 November 2021 from neither [ML]'s email the [ML]@homeoffice.gov.uk address nor from NotificationsandCancellationsTeam@homeoffice.gov.uk.

11. The screenshots of the Google data were taken by Counsel for the Applicant.

12. There is no expert evidence in respect of the Data nor emails generally".

53. Ms Selvakumaran accepted during her submissions that the email was sent by the Home Office to the applicant at the correct email address on 25th November 2021. As stated at [29] of **Alam,** 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. As stated in [30] of **Alam**, receipt of an email will be effected by the arrival of the email in the inbox of the person affected and "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".

54. An inbox is an umbrella term and includes spam and junk boxes and even the deleted box and therefore emails directed to those boxes.

55. A crucial point decided in **Alam** is that at [31] which states:

"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".

56. As noted at [32] of Alam the statement "whether the material before the court raises a factual issue which, taken at its highest, could properly succeed in a contested factual hearing" relates to arguability on permission. The detail of the test on arguability is set out at [33]. As far as [33(a), (b) and (c)] are concerned they clearly relate to 'permission' and as usual [33(d)] will depend on its own facts which have been considered in this case.

57. The question in a substantive hearing is simply whether the applicant had discharged the burden on him on the balance of probabilities of

proving that he was not given notice. In the face of highly persuasive evidence the requirement is more pressing to show particularly persuasive evidence, albeit still on the balance of probabilities, that the applicant had not received the email.

58. That is the starting point. The critical point is that the applicant is deemed to be given notice unless the contrary is proved. I found a number of difficulties in the applicant's attempt to discharge the burden.

59. First, the applicant relied heavily on the Google data dating from 2021 but which was not requested until 23rd September 2023. As the applicant stated, the Google data was requested following an instruction from the solicitor and following the rejection by the applicant of his skilled worker's application. The email from Google dated 25th September 2023 leaves open the critical question of what was encompassed in the data provided. It is not clear that it is complete, it is not clear what it includes and that does not appear to be a question which was asked. Albeit the applicant stating on 1st October 2023 that the applicant was sent a download link of all emails in his Gmail, that does not confirm that all the data relating to November 2021, the relevant period, was included.

60. The applicant could have provided a computer expert report, or at least a report from someone familiar with the Gmail system and had not. That is fatal to his case because it is just not possible, on the balance of probabilities, to conclude that everything historically received is included in the applicant's data.

61. Further, the applicant had not disclosed the settings on his Gmail account, nor provided evidence to the effect that there were no automatic deletions. He stated that the email to Mr Pendyala sent by mistake by the Home Office to the applicant's Gmail account was found in the spam account but that is not clear from the documentation either. No screenshot was taken of the data received from Google to show this email was in 'spam'.

62. That raises a further difficulty for the applicant. First the applicant stated in oral evidence that he checked his inbox every day and his spam or trash box frequently and every other couple of days, but then that he missed this email from the Home Office to Mr Pendalaya and went back and found it after he received the rejection in 2023. That suggests, however, that he did not check his emails carefully and suggests that if he missed the Pendalaya email he would have missed the email to him.

63. The applicant then, by contrast in his oral evidence, stated that although he had seen the Pendalaya email, he paid little attention to that email because it did not have his name on it. I find it wholly incredible that the applicant ignored an email from the Secretary of State when placed in the context of the applicant's circumstances. This was someone that had come to the UK to study and in February 2020 had been told by the University of East London that he was to be excluded from the course because he had not paid his fees. At that point the applicant knew that he was in the UK but no longer compliant with the conditions of his visa.

If that were the case, if an email from the Secretary of State were seen, I do not accept it would have been merely skipped over or ignored on the basis that his name was not included in the strapline. Indeed, from the Google data provided to the Tribunal there was no name in the strapline. The subject simply stated "Important Notice from the Home Office – Decision to cancel leave ...". That is the full information on the strapline that the Tribunal was provided with. It may be that there was further information in the strapline which the applicant could see but I simply do not accept that he would ignore such a notice, whether his name was in the email or not.

64. First, I do not accept that the applicant was wholly candid that he merely skipped over this email. Secondly, there is no confirmation that the Pendalaya email was in spam where emails are routinely deleted, but thirdly either way the applicant stated initially he did not identify this Pendalaya email until the Google data trawl and I find that not credible.

65. It is either the case that the applicant himself deleted the email or that the email was automatically deleted from his spam or trash boxes. As noted, his computer settings were not disclosed.

66. Bearing in mind another email from the Home Office did make its way through to the applicant's email boxes from the self-same person who sent the applicant an email attaching the notice of curtailment, that is highly persuasive evidence that the email of 25th November 2021 did make its way into one of the applicant's inboxes. Indeed, the applicant confirmed that he had previously received emails from the respondent and his address had not changed.

67. Nothing shown to me in the Google data confirms that all historic emails were provided. The agreed schedule of facts merely stated that "Google confirmed that the Data provided includes emails contained in the inbox, spam and trash folders as at the date that the Data was disclosed". That is not confirmation that this included data as at 25th November 2021. That there is no evidence that the data contained emails which were deleted prior to the date of being provided to the applicant.

68. The applicant maintained that the 29th November 2021 Pendalaya email was included in spam but there was no confirmation as to its location and there was no confirmation that it had not been moved from one box to another. It is clear that the applicant came to the UK to study computer science and I note he was receiving newsletters on 25th November in relation to interviews for web designer and network engineer.

69. Overall, I simply do not accept, that the applicant has discharged the burden, in the face of convincing evidence, of showing that the notice was not received into his inbox. There was no indication of any interception prior to the email being received into an inbox or once in the inbox. The applicant was the only person who had access to his inbox. The mailbox includes spam and trash and deleted emails and here there is no reference to the deleted email box.

70. Ms Selvakumaran pointed out the distinguishing features between this applicant and that in the case of **Escobar** but in my view the applicant owing to the lacunae in the evidence and on the facts of this particular case, failed to demonstrate that the presumption is rebutted.

71. For completeness that the ECS did not confirm that his visa was curtailed does not undermine the service of the curtailment letter. The ECS is a separate department.

72. I conclude that the decision of 2nd March 2023 whereby the Home Office refused the applicant's skilled worker application stating that his leave to remain in the UK as a Tier 4 (General) Student was curtailed to expire on 25th January 2022 was not subject to a public law error and the application is dismissed.

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