

## DECISION 16 -25

of the Examination Appeals Board of Leiden University  
in the matter of  
the appeal of [name], appellant  
against the Board of Examiners of Astronomy, respondent

### 1. Origin and course of the proceedings

The appellant sent a letter on 27 January 2016 which was received on 5 February 2016 lodging an administrative appeal against the decision that was taken on 20 August 2015 with regard to insufficient academic progress.

On the grounds of Article 7:17 of the General Administrative Law Act (*Algemene wet bestuursrecht*, hereafter to be called: Awb) the decision may be taken not to hear interested parties in an administrative appeal, if the appeal is manifestly inadmissible or manifestly unfounded.

### 2. Considerations with regard to admissibility

Article 6:7 of the Awb stipulates that the term for submitting a letter of appeal is 6 weeks.

An appeal could be filed against the decision of 20 August 2015 up to and including 2 October 2015. The letter of appeal dated 27 January 2016 was received by the Examination Appeals Board on 5 February 2016 (date of postmark 4 February 2016). This date is outside the term within which an appeal could be lodged.

In its registered letter of 15 February 2016, the Examination Appeals Board advised the appellant of Article 6:7 of the Awb, which stipulates that the term for submitting a letter of appeal is 6 weeks. This Article also states the following considerations with regard to admissibility.

Pursuant to Article 7.61, paragraph one, preamble under f, of the Higher Education and Academic Research Act (*Wet op het hoger onderwijs en*

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*wetenschappelijk onderzoek*, hereafter: WHW), the Examination Appeals Board is the competent authority with regard to decisions of Boards of Examiners and examiners.

The Appeals Tribunal for Higher Education considered the following in its decision of 28 August 2015 (CBHO 2015/100).

Article 5.5 of the Code of Conduct International Student Higher Education, (*Gedragcode internationale student in het hoger onderwijs*, Code of Conduct) stipulates that educational institutions are obliged to deregister international students at the Dutch Immigration and Naturalisation Service (*Immigratie- Naturalisatiedienst*, IND), if they do not meet the requirement to complete 50 per cent of the nominal study load, unless there are mitigating personal circumstances as referred to in article 7.51 of the WHW and article 2.1 of the WHW Implementation Decree (*Uitvoeringsbesluit WHW*).

In its letter of 20 August 2015, the Board of Examiners informed the appellant that it had complied with its obligation to deregister him at the IND since he did not meet the level of academic progress as stipulated in article 5.5 of the Code of Conduct and there was no evidence of mitigating personal circumstances. The letter from the Board of Examiners dated 21 September 2015 only contains a factual statement and is, consequently, not intended to have any legal effect. This letter is therefore not a decision by a Board of Examiners or an examiner as referred to in art. 7.61, paragraph one, preamble and under f of the WHW. That the appellant may not be able to stay in the Netherlands as a consequence of the fact that he did not meet the level of progress stipulated in article 5.5 of the Code of Conduct is a decision that can only be taken by IND on behalf of the State Secretary for Security and Justice. A separate procedure is in place for appeals and/or objections against this decision.

In its letter of 22 February 2016, the Examination Appeals Board requested the respondent to investigate whether an amicable settlement could be reached in line with the stipulations of article 7.61, paragraph three of the WHW.

Notification was received from the respondent on 10 March 2016, stating that the parties had held a meeting to discuss the possibility of an amicable settlement. The respondent reached the conclusion that an amicable settlement was not possible.

Given the above, the requirements of article 7.61, paragraph three of the WHW have been complied with. As it has become evident that the parties are unable to reach an amicable settlement, the letter of appeal must be dealt with as concluded previously based on article 6:7 of the Awb.

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Since the Examination Appeals Board has not been informed of any other facts or circumstances that could lead to an alternative decision, the appeal must be held manifestly inadmissible solely on the grounds that it was not lodged within the appeal period.

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### 3. The decision

The Examination Appeals Board of Leiden University, in view of article 7.61 of the WHW, together with article 6:7 of the Awb, article 5.5 of the Code of Conduct International Student Higher Education, article 7.51 of the WHW and article 2.1 of the WHW Implementation Decision,

holds the appeal **unfounded**.

Established by a chamber of the Examination Appeals Board, comprised of H.J.G. Bruens (Chair), LL.M., Prof. E.P. Bos, Dr A.M. Rademaker, C. de Groot, LL.M., and H.J.J. Bisscheroux (members), in the presence of the Secretary of the Examination Appeals Board, J.J. Boon.

H.J.G. Bruens, LL.M.,  
Chair

J.J. Boon,  
Secretary

Certified true copy:

Sent on: