

## DECISION 14-303

of the Examination Appeals Board of Leiden University

in the matter of

the appeal of [name], appellant

against

the Board of Examiners of the Master's programme in Linguistics, respondent

### 1. Origin and course of the proceedings

The appellant sent a letter on 15 December 2014, which was received on 5 January 2015, in which he lodged an appeal against the decision of the respondent of 24 November 2014. This decision stated that the University would notify the Immigration and Naturalisation Service (IND) that he had earned fewer than 50% of the required credits.

In short, the appellant stated that he almost always attended the tutorials. He indicated that he had difficulty writing the papers, because he was used to a different form of education. The appellant believes that his mark should have taken his attendance and the effort into account. He also believes that he did not receive sufficient support from the lecturers, which means that there were flaws in the study programme.

The appellant stated that he may have been ill during his studies and that he contacted a psychologist about this. The appellant pointed out that he held an administrative role as Secretary General of the Leiden branch of the Association of Chinese Students and Scholars in the Netherlands. This role can be compared with 30 ECTS per academic year. In addition, the appellant does not believe that the rule that international students must demonstrate 50% student progress applies to him. In this respect the appellant stated that he began his studies before this rule took effect. The appellant stated that his residence permit for the Master's programme in Linguistics has already expired and that his current residency is based on a residence permit for the Dutch Studies programme. The appellant stated that he has the right to education.

An attempt was made to reach an amicable settlement, but this has not led to the appeal being withdrawn.

A letter of defence was submitted on 9 February 2015, which stated that the appellant was notified in a letter of 13 May 2014 that he had earned too few credits and would need to

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earn at least 30 credits before 1 September 2014. The appellant was also informed that if he was facing personal circumstances he could report these to the student counsellor or institute. The appellant did not take advantage of this opportunity.

The respondent is of the opinion that no personal circumstances had occurred that could excuse this lack of study progress. The respondent pointed out that the Coordinator of Studies has stated that the appellant's conduct at the tutorials was often considered disagreeable. In this respect, the respondent referred to statements from a number of lecturers, which show that the appellant often arrived late, was unprepared and submitted papers of a quality well below the level expected. Furthermore, the appellant has not demonstrated that he held an administrative role nor that he was ill during his studies. The respondent pointed out that appellant has not earned a single credit.

The appeal was considered on 4 March 2015 during a public hearing of a chamber of the Examination Appeals Board. The appellant did not appear in person and did not send any representation. [names], were heard on behalf of the respondent.

## **2. Considerations relating to admissibility**

The appellant lodged a timely appeal against the decision of 24 November 2014 by means of the letter of 15 December 2014 that was received on 5 January 2015 by the Examination Appeals Board. Furthermore, the letter of appeal meets the requirements as stipulated in the General Administrative Law Act (*Algemene wet bestuursrecht* 'Awb') and the Higher Education and Academic Research Act (*Wet op het hoger onderwijs en wetenschappelijk onderzoek* 'WHW'). Consequently, the administrative appeal is admissible.

## **3. Considerations relating to the dispute**

The appeal is against the decision of 24 November 2014, which stated that the University would notify the IND that the appellant had earned fewer than 50% of the required credits.

In accordance with article 7.61, paragraph two of the WHW, the Examination Appeals Board must determine whether the contested decision is in contravention of the law.

Pursuant to the Regulation issued by the Minister of Education, Culture and Science dating from 17 May 2013, no. HO&S/504498, which sets the criteria for the study progress of international students with a study residence permit (the Regulation), the criteria for sufficient study progress, as provided for in article 3.87a, first paragraph, b, of the Aliens Act 2000 (*Vreemdelingenbesluit*), are the criteria as documented in article 5.5 of the Code of Conduct for International Students in Higher Education (the Code of Conduct).

The required study progress appears in article 5.5 of the Code of Conduct. This states, insofar as is relevant here, the following:

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‘At the end of each academic year, the institution determines the annual student progress of the international student [...]. Satisfactory student progress is considered: 50% (or more) of the proportional nominal study load for a full or partial academic year. Contrary to this, international students must successfully complete the preparatory year. In case of insufficient student progress, the institution will examine the cause, for instance by conducting a student’s progress discussion with a student advisor. [...] In case of personal circumstances as referred to in Article 7.51 WHW as well as in Article 2.1 of the WHW Implementation Decree, which can be regarded as valid reasons for unsatisfactory student progress, binding agreements are made with the international student so that the study can be completed in time. [...]’

The guidance notes to the Regulation stipulate that an educational establishment that acts as sponsor is obliged to inform the IND if an individual international student with citizenship of another country does not meet these criteria. If this obligation is not met, an administrative fine can be levied. In serious cases the educational establishment’s recognition as sponsor may be suspended or revoked, which would mean no more international students could be admitted to this establishment.

The Examination Appeals Board understands that at the University it is the duty of the Board of Examiners of the programme in question to determine, upon the advice of the student counsellor, whether personal circumstances have hindered a student in his or her studies. If the student has demonstrated insufficient progress, the Board of Examiners must assess whether the personal circumstances provide sufficient grounds to refrain from reporting the matter to the IND.

It has been established that the appellant enrolled in the Master’s programme in Linguistics in the 2013-2014 academic year and that in that year he earned 0 (zero) credits and thus failed to demonstrate sufficient progress.

Furthermore, the Examination Appeals Board understands that the appellant was informed in a letter dated 13 May 2014 that at that point he did not yet meet the ‘50% requirement’, as provided for in the Regulation. The appellant was also informed that he should seek contact with a student counsellor if he was of the opinion that his lack of progress was due to personal circumstances. The appellant did not make use of this opportunity, nor did he seek contact with the respondent. The respondent was thus unable to take the existence of personal circumstances into consideration in its decision of 4 November 2014, which means that the decision on these grounds alone cannot be in contravention of the law.

Furthermore, the Examination Appeals Board established that the appellant stated that he was hindered by illness, an administrative role and a flawed programme of study only following the decision of 24 November 2014.

The Examination Appeals Board is of the opinion that the respondent was correct in deciding not to review the decision, given that the appellant has still not managed to demonstrate that he was hindered in his studies. The appellant has not provided any

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documentary evidence nor has he substantiated his arguments sufficiently to prove the hindrance.

In addition, the Examination Appeals Board points out that the appellant failed to follow the applicable procedure for adapting a programme of study to take account of an administrative role. Before accepting the role the appellant should have consulted with the study adviser about possible modification of the programme of study. The hindrance that the appellant may have experienced due to his administrative role should therefore be considered his own responsibility.

In addition, the appellant questioned the legitimacy of the 50% regulation. At the hearing the respondent explained that the Regulation had already been adopted by the minister in 2013 and that the appellant was notified of this regulation on multiple occasions and was informed of the consequences should his progress be insufficient. The points raised in this respect by the appellant therefore do not give the University any reason to decide not to inform the IND, which it is required by law to do. The fact that the appellant has already started another programme does nothing to change this.

Insofar as the appellant has tried to demonstrate that he has been denied the right to education, the Board considers this unfounded. The respondent has simply implemented the Dutch legislation that is in force. In addition, the contested decision and the fact that the University will inform the IND does not mean that he is being denied access to education. In this respect the Board remarked that the respondent has stated that the appellant has followed various programmes at the University since 2010 and that thus far he has only earned a total of 10 credits. In addition, after the appellant earned zero credits in the 2013-2014 academic year, he was once again admitted to another programme at the University. The appellant thus has always enjoyed and been granted the right to education.

Furthermore, the statement of 9 February 2015 by the coordinator of studies indicates that several lecturers have complained about the appellant's conduct. The statement shows that, among others, the appellant committed plagiarism several times, failed to submit papers, regularly arrived late and failed to prepare a presentation. The Board considers it inappropriate for the appellant to appeal to his right to education since it has become apparent that he has repeatedly squandered this right.

The Examination Appeals Board points out that should the appellant fail to agree with this decision he can approach a civil court.

Since the Board has not been made aware of other facts or circumstances that could justify an alternative decision, the appeal must be declared unfounded.

#### **4. The decision**

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in view of article 7.61 of the Higher Education and Academic Research Act,

declares the appeal **UNFOUNDED**.

Established by a chamber of the Examination Appeals Board, comprising H.J.G. Bruens, LLM (chair), Professor E.P. Bos, Professor E.M. Noordijk, Dr K Beerden and S. Chen. LLB, (members), in the presence of the Secretary of the Examination Appeals Board W.J. de Wit, LLM.

H.J.G. Bruens, LLM,  
Chair

W.J. de Wit, LLM  
Secretary

Certified true copy:

Sent on: