



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

Appeal Number: IA/00592/2013

THE IMMIGRATION ACTS

Prepared at Field House On the Papers

On 29 November 2013

Determination

Promulgated

On 16 December 2013
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Before

UPPER TRIBUNAL JUDGE CRAIG

Between

NITIN KRISHNA SHETTY

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The appellant, who is a national of India born on 12 February 1989, has appealed against a decision of First-tier Tribunal Judge Hopkinson, who had dismissed his appeal against the refusal of the respondent to vary his leave to remain in the UK as a Tier 4 (General) Student. At the same time as refusing the appellant's application, the respondent also made a decision to remove the appellant by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. On 15 July 2013 I refused permission to appeal against the substantive decision, but gave the appellant permission to appeal limited to arguing that the removal decision was not in accordance with the law. The following day, in a document entitled "Decision and Directions", I set out the provisional view of the Tribunal that the appellant's appeal against the removal decision should be allowed without a hearing, to the extent that the respondent's decision to remove the appellant was not in accordance with the law, for the reasons set out in the grounds in support of the application for permission to appeal.
3. I stated further that before so ordering, the Tribunal would consider any representations made on behalf of the respondent as to why this appeal should not be allowed to this limited extent, so long as such representations were filed with the Tribunal and served on the appellant by no later than 7 days after service of this decision.
4. Following service of this decision on the parties, and of my decision granting limited permission to appeal, a response was received from the respondent, dated 31 July 2013, in which the respondent expressed agreement with the Tribunal's provisional view. No further representations have been received from or on behalf of the appellant.
5. It appears that the file was mislaid and it has only just been placed before me, containing the response from the respondent referred to above. In light of this response I now make the decision which I indicated I intended to make, for the reasons set out in my earlier Decision.

Decision

I set aside the determination of the First-tier Tribunal as containing a material error of law and substitute the following decision:

The appeal against the respondent's substantive decision, refusing to vary the appellant's leave to remain in the UK as a Tier 4 (General) Student is dismissed.

The appeal against the respondent's simultaneous decision to remove the appellant by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006 is allowed to the limited extent that this decision was not in accordance with the law.

Signed:

Dated: 10 December 2013

Upper Tribunal Judge Craig