



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

Appeal Number: IA 01571 2013

THE IMMIGRATION ACTS

Heard at Field House

On 2 December 2013

Determination

Promulgated

On 11 December 2013

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SYED ABDUL WAQ TAHA SAYEED

Respondent

Representation:

For the Appellant: Mr L Tarlow, Senior Home Office Presenting Officer

For the Respondent: No appearance

DETERMINATION AND REASONS

1. At about 10:30 am when it was convenient to hear this appeal neither the respondent nor his representatives, SZ Solicitors, had attended. Notice of hearing was sent on 5 November 2013 to the respondent's solicitors. At their request a similar Notice was sent to the respondent in their care. I am satisfied that there was good service under the Rules of the Notice of Hearing and I decided to continue with the hearing in the absence of the respondent.
2. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the respondent's appeal against a decision of the

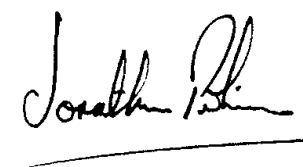
Secretary of State refusing to give him further leave to remain as a Tier 1 (Post-Study Work) Migrant.

3. There is only one point of relevance. It is that the respondent could not satisfy the requirements of the Rules because that he could not show that he had obtained his degree within twelve months of his last being given leave. It is right to say that he had done all the work and had satisfied the university that he was entitled to a degree but the degree was not awarded until 30 May 2012. The application was made on 27 January 2012 and clearly could not have been accompanied by the certificate showing he had obtained his degree because he had not then been awarded his degree.
4. The First-tier Tribunal following the guidance of this Tribunal in the case of Khatel and others (s85A; effect of continuing application) [2013] UKUT 00044 (IAC) and allowed the appeal but we now know that Khatel was decided wrongly (see Secretary of State for the Home Department v Raju & Ors [2013] EWCA Civ 754). The point is that in Khatel it was thought that making an application was a continuing process and as long as the necessary documents were put before the Secretary of State before she made her decision the requirements of the Rule were met. That is what had happened here but Khatel is a wrong statement of the law. The Rules require the applicant to support his application with the certificates when he made the application which this claimant clearly could not do.
5. It follows therefore that although the First-tier Tribunal thought it was doing the right thing, it was doing precisely the wrong thing. It should have dismissed the appeal and I set aside the decision of the First-tier Tribunal and substitute a decision dismissing the appeal under the Rules.
6. I have to ask myself if the decision is any way contrary to the law or contrary to the human rights of the claimant and it is not. This is a case, as many are, of a person who as far as I know has done nothing in any way discreditable but who cannot satisfy the requirements of the Rules. The only legitimate expectation to which he was entitled was an expectation of a decision in accordance with the Rules applicable when an application was made which is precisely what he got. Although Article 8 of the European

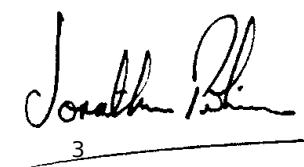
Convention on Human Rights is clearly raised there is nothing in the papers to suggest that the claimant has, for example, any of the weighty human relationships such as a UK based wife or UK national children that can make a big difference when an Article 8 balancing exercise is carried out.

7. On the evidence before me I find that the interference in the respondent's private and family life consequent on removing is simply what is to be expected in the case of a person who has been in the United Kingdom since 2009. He will have established useful social relationships but these things do not count for very much in the balancing exercise. The Rules embody a policy and there is nothing unlawful about them generally or on the facts of this particular case.
8. As is so often the case in circumstances such as this it is not easy to see why the Rules have been drawn so that a person who has studied for a higher degree at a British university cannot extend his stay because the Rules require him to produced his degree certificate before he is admitted as a graduate even though he has passed his examinations. However the Rules are clear and the respondent did not satisfy them. There are no special circumstances which make it contrary to his human rights to remove him.
9. It follows therefore that I set aside the decision as indicated and I dismiss the respondent's appeal against the Secretary of State's decision.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 6 December 2013



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