



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

**Appeal
Number**

IA/01748/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 15 November 2013 at On 25 November 2013
Determination
promulgated**

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

Secretary of State for the Home Department

Appellant

and

Adil Noushad

(No anonymity direction made)

Respondent

Representation

For the Appellant: Ms. A. Everett, Home Office Presenting Officer.

For the Respondent: Mr Noushad in person.

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of First-tier Tribunal Judge Coutts promulgated on 7 June 2013, allowing Mr Noushad's appeal against

the Respondent's decision dated 31 December 2012 to refuse leave to remain as a Tier 1 (Post Study Work) migrant.

2. Although in the proceedings before me the Secretary of State is the appellant, and Mr Noushad is the respondent, for the sake of consistency with the proceedings before the First-tier Tribunal I shall hereafter refer to Mr Noushad as the Appellant and the Secretary of State as the Respondent.

3. I pause to note that the Respondent had also made a decision to remove the Appellant pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006, but this decision was withdrawn at the appeal hearing before Judge Coutts: see determination at paragraphs 3 and 9.

Background

4. The Appellant is a national of Pakistan born on 6 September 1976. He was granted leave to enter the UK as a student in February 2004 and thereafter obtained subsequent grants of leave to remain, most recently on 8 September 2010 as a Tier 4 (General) Student until 26 March 2012. During the currency of this latter leave the Appellant pursued studies at the London College of Business in Barking, Essex on their MBA (University of Wales) course.

5. By way of an application made on an application form signed by the Appellant on 23 March 2012, and recorded by the Respondent as made on 23 March 2012, the Appellant sought variation of leave to remain as a Tier 1 (Post Study Work) migrant.

6. At the date of making his application he did not have available to him a degree certificate, and so did not enclose one: see application form at G5. Instead he ticked the box on the application under the wording "*If the applicant has been unable to submit their original certificate of award because it has not yet been issued, tick the box to show that the applicant has sent an original letter from the institution giving details of the awarding body, and confirmation that the certificate will be issued*". The Appellant enclosed with his application a letter from the London College of Business dated 12 March 2012: however this letter did not confirm that the certificate of award would be issued, merely stating that the Appellant had submitted his dissertation on 12 March 2012 "*for which the results are still awaited*". It was not indicated that the Appellant had been successful and that he therefore *would* be awarded his degree.

7. In due course the Appellant obtained a further letter from the London College of Business indicating that the dissertation had been approved securing 55%, and that the Appellant had thereby completed his course on 9 May 2012, and would be awarded a degree certificate by the University of Wales in July 2012.

8. In the meantime the Post Study Work migrant scheme was closed by the Respondent with effect from 5 April 2012.

9. The Respondent refused the Appellant's application for reasons set out in a combined 'reasons for refusal letter' and Notice of Immigration Decision dated 31 December 2012 with reference to paragraph 245FD of the Immigration Rules, with particular reference to the date of the Appellant's application and the date of the award of his degree.

10. The Appellant appealed to the IAC. His appeal was allowed for reasons set out in the First-tier Tribunal Judge's determination, in particular with reference to the decision in **Khatel and others (s85A; effect of continuing application) [2013] UKUT 00044 (IAC)**.

11. The Respondent sought permission to appeal to the Upper Tribunal. This was initially refused by First-tier Tribunal Judge Cruthers on 26 June 2013, but was then granted on 12 August 2013 by Upper Tribunal Judge Allen. Judge Allen identified that the Respondent's decision was "*clearly arguable*" in light of the decision in **Raju and others [2013] EWCA Civ 754**.

Adjournment Application

12. There was on file a letter dated 11 October 2013 from the solicitors who had represented him hitherto, stating that they did not have instructions to attend the hearing today. The letter contained no sort of application.

13. The Appellant appeared in person. He sought an adjournment of the appeal, not so that he could obtain representation, but because the appeal had previously been adjourned to await decisions in similar, cases.

14. I note that this appeal was previously adjourned on 7 October 2013 to await the promulgation of similar decisions that were due to be heard in the Upper Tribunal on 8 October 2013.

15. I recognise that in light of the change of understanding of the applicable law represented by the different bases of the decisions in **Khatel** and **Raju** there are likely to be a number of cases similar to the Appellant's to be heard in the Upper Tribunal. However, of necessity any such decision of the Upper Tribunal will not have authority greater than the decision in **Raju**. Further, I consider that I have no difficulty in understanding the decision in **Raju**, and, with respect, do not feel that I require further guidance as to its meaning in the context of the instant appeal. It may well be that there are some cases which raise particular issues on their facts that may give rise to a basis to seek to distinguish **Raju**, or to have its principles applied in a particular way. Some guidance from a brother or sister judge may be of assistance in this regard, although would not be binding. However, I detect no such potential idiosyncrasy on the facts of this particular case, which appears to be 'squarely on all fours' with the circumstances of the applicants considered in **Raju and others**. In such circumstances I am unable to envisage that anything new or of particular value may emerge from other cases pending consideration in the Upper Tribunal.

16. Accordingly in all of the circumstances, and having regard to the overriding objective set out in Rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008, which includes at 2(2)(e) the need to avoid delay so far as compatible with proper consideration of the issues, I refused the Appellant's application for a further adjournment.

17. The Appellant did not thereupon seek an adjournment on any other basis, including wishing to have the benefit of representation.

Error of Law

18. The First-tier Tribunal Judge identified the key basis of the Respondent's decision to refuse the Appellant variation of leave to remain at paragraph 10 of his determination (save that there is a factual error as to the date of the Appellant's application which was 23 March 2012, not 3 April 2012).

19. The Judge concluded that the Respondent was in error in rejecting the Appellant's application on the basis that he was awarded his degree subsequent to the making of his application, relying upon the decision in **Khatel** to the effect that the application should have been "*treated as a continuing application, starting with the date when it was first submitted and ending on the date when it is decided*" (determination at paragraph 11).

20. In light of the decision in **Raju**, which rejects the notion of a continuing application and holds that an application is made on the date that it is received, the Judge's reliance upon **Khatel** was in error.

21. Necessarily as it was the determinative point in the appeal, this was a material error of law. In the circumstances the decision of the First-tier Tribunal Judge requires to be set aside and re-made.

Remaking the decision

22. The decision can be remade without hearing further evidence on the basis of all of the available evidence. The facts are straightforward and uncontroversial.

23. Pursuant to the decision in **Raju** the Appellant's application was made on 23 March 2012. At this date he had not been awarded the degree upon which he seeks to place reliance in support of his application for variation of leave to remain. In the circumstances he was not entitled to the points claimed by virtue of that degree. The Respondent's decision was in accordance with the Immigration Rules.

24. I note that no claim was made before the First-tier Tribunal in respect of Article 8 of the ECHR: see determination at paragraph 3. That remains the case: nothing was advanced by the Appellant and no supporting evidence has been filed in relation to a family /private life claim.

25. I can otherwise detect no basis for concluding that the Respondent's decision was not in accordance with the law.

Decision

26. The decision of the First-tier Tribunal Judge contained an error of law and is set aside.

27. I re-make the decision. The appeal of Mr Noushad is dismissed.

Deputy Judge of the Upper Tribunal I. A. Lewis 15 November 2013