



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

Appeal Number: IA/02549/2013

THE IMMIGRATION ACTS

Heard at Field House

**Sent on:
8 October 2013**

**Before
UPPER TRIBUNAL JUDGE STOREY**

Between

MISS AMBREEN AZIZ KHAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. In a decision made on 19 July 2013 I found that the First-tier Tribunal judge had erred in law in relying on *Khatel and others* (s85A; effect of continuing application)[2013] UKUT 44 (IAC) which had subsequently been overturned in *Raju & Ors* [2013] EWCA Civ 754.
2. I set aside the decision.

3. I also said that unless persuaded otherwise by any response the appellant before the First-tier Tribunal wished to make I would proceed to re-make the decision dismissing the appellant's appeal.
4. The appellant has now written arguing that there was an unresolved issue of fact as to whether Khatel applied and so the case should be sent to the First tier Tribunal for its finding on fact. The appellant also submits (correctly) that Raju & Ors is the subject of an application for permission to appeal to the Supreme Court.
5. I am afraid this further application does not persuade me to take a different view from that which I expressed in July. The clear finding of the First-tier Tribunal (and nothing now said by the appellant undermines it) is that the date of the award postdated the appellant's application. Applying Raj & Ors, the appellant's appeal must fail.
6. The fact that there is an application to appeal to the Supreme Court for permission to appeal against Raju & Ors does not assist the appellant. I must apply the law as it is: see e.g. SG (Iraq) EWCA Civ [2013] 1 WLR 41.
7. Accordingly I proceed as I earlier said I might to re-make the decision by dismissing the appellant's appeal. The respondent was entitled to decide that she had failed to meet the relevant requirements of the Immigration Rules.
8. To summarise: the First-tier Tribunal erred in law necessitating that I set aside its decision. The decision I re-make is to dismiss the appellant's appeal.

Signed

Date:

Dr H H Storey

Judge of the Upper Tribunal