

**Upper Tribunal  
(Immigration and  
Asylum Chamber)  
Appeal Number:  
IA/02184/2014**



**THE IMMIGRATION ACTS**

**Heard at Field House  
On 24 July 2014**

**Determination  
Promulgated  
On 26 August 2014**

**Before  
DEPUTY JUDGE DRABU CBE**

**Between  
MR HAMAD KHAN**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**ANONYMITY DIRECTION NOT MADE**

**Representation:**

For the appellant: In person  
For the Respondent: Ms K Pal, Senior Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a national of Pakistan. His date of birth is 10 August 1989. His application for leave to remain in the UK as a tier 4 (General) Student Migrant made on 21 October 2013 was refused by the respondent for reasons given in her decision letter dated 17 December 2013. Judge Tootell at Hatton Cross heard his appeal on 27 March 2014. The First tier judge dismissed the appeal for reasons given in his determination which was promulgated on 29 April 2014. The judge heard oral evidence from the appellant. The Judge found the appellant to be a credible witness. The Judge said, "I further accept that he was hoping to supplement his original application with a further bank account statement and better English language results due to the mistaken advice which he had been given by the college and a lawyer, that he could do so. Regrettably that advice was quite wrong for reasons which appear above at Paragraphs 30-32 of this determination" In the said paragraphs the Judge has referred to Section 85 (A) of the 2002 Act which was brought into force on 23 May 2011, Section 85 (A)(4)( and the decision of the

Court of appeal in **Khatel [2013] EWCA Civ 754**. On the evidence before him the Judge concluded that the appellant did not hold his funds in a bank account for the required period and secondly that he was not in a position to submit adequate English language certificate results as at October 2013. The Judge said, "I have no alternative but to find that the Appellant's application did not meet the requirements of Paragraph 245ZX(c) and (d) of the Immigration Rules. I therefore dismiss the appeal".

2. The appellant sought and was granted permission to appeal to the Upper tribunal on the basis that the judge had "not considered the application of **Gulshan** or whether the gateway can be passed through to consider whether there has been a breach of Article 8....."
3. Permission to appeal was granted on 11 June 2014 by Judge P J M Hollingworth, a Judge of the First-Tier Tribunal.
4. On 18 June 2014 the respondent put in her response to the appellant' grounds of appeal under rule 24, opposing the appeal and submitting that the Judge had directed himself appropriately and his non consideration of the appellant's claim was not in material error of law as it had not been raised and in the alternative it would have made no difference to the outcome of the case as there is nothing exceptional or compelling about the appellant's circumstances that would warrant this case being granted outside of the rules.
5. At the hearing before me the appellant was once again unrepresented as he was before the First-tier Tribunal. I explained the procedure to him and asked him if he felt that he needed legal representation. He said he understood the procedure and that he did not want legal representation. He repeated his grounds and said that a solicitor had wrongly advised him that he did not need to prove that he had the funds needed by submission of bank statements. He said that he had the money in cash at the time. Ms Pal argued that the requirements under the Rules had not been met at the time when the application was made and therefore its refusal was perfectly justified as Judge Tootell had concluded. She said that as far as Article 8 claim is concerned. It had not been pleaded and in any case as required by the legal principles established by the decision in Gulshan there was nothing exceptional or compelling in the facts of this case to warrant grant of leave outside the Immigration Rules.
6. Having given careful consideration to all the relevant facts and the law, I find that the decision of Judge Tootell was not in material error of law for the reasons argued by Ms Pal. The principles set down in Gulshan are of no avail to the appellant. This appeal must therefore be dismissed.
7. However given the positive credibility findings made by Judge Tootell regarding the appellant's claim that he fell foul of the rules

because of wrong advice by college and a professional, I respectfully suggest that the respondent should consider grant of leave on an exceptional basis to enable him to complete his studies.

**FEE AWARD**

Appeal having been dismissed there can be no award.

**ANONYMITY DIRECTION**

None has been sought and circumstances of the case do not warrant such direction.

Judge Drabu CBE

Judge of the First Tier Tribunal sitting as Deputy Judge of the Upper Tribunal.

17 August 2014