



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

Appeal Number: IA/13998/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 14 August 2014**

**Determination
Promulgated
On 20th Aug 2014**

Before

UPPER TRIBUNAL JUDGE GOLDSTEIN

Between

AKASH DEEP

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Hawkins, Counsel instructed by Messrs Joseph Thaliyan Solicitors

For the Respondent: Mr T Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by the Appellant, a national of India born on 30 December 1987 against the decision of the First-tier Tribunal who, sitting at Hatton Cross on 30 October 2013 and in a determination subsequently promulgated on 21 November 2013, dismissed the appeal of the Appellant

against the decision of the Respondent dated 17 April 2013 to refuse his combined application for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant under the Points-Based System and for a Biometric Residence Permit.

2. Permission to appeal that decision was granted in light of the decision of the High Court in this case.
3. The First-tier Judge in holding that the Appellant failed to satisfy the requirements of the Rules failed to appreciate that the relevant time for judging whether the requirements of the Rules had been complied with was the time of the decision (see Shabhaz [2014] EWHC 2038 (Admin)).
4. It was thus contended by the Appellant inter alia, that the Judge erred in law by applying to him a requirement that did not come into force until long after the Appellant's application had been made and decided. The Rule change did not have any retrospective effect.
5. In such circumstances it came as no surprise to me when at the outset of the hearing before me on 14 August 2014 Mr Wilding most helpfully and realistically informed me as follows:

“We accept that there is an error of law in the First-tier Tribunal's decision in that it was before Appendix O was brought in.

Accordingly the Respondent cannot argue that all the results had to be in the same certificate and therefore it is accepted that the First-tier Judge materially erred in law and we invite you to re-make the decision allowing the Appellant's appeal.”

In light of that concession I informed Mr Hawkins that he need not trouble to address me.

Conclusions

6. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
7. I set aside the decision.
8. I re-make the decision in the appeal by allowing it.

Signed

Date 19 August 2014

Upper Tribunal Judge Goldstein