



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
IA/15686/2012

Appeal Number:

## **THE IMMIGRATION ACTS**

**Heard at: Field House  
On: 21 November 2014**

**Decision Promulgated  
On: 24 November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS**

**Between**

**INDRA BHADUR BASNET**  
(anonymity direction not made)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

### **Representation**

For the Appellant: Mr R Khosla, Counsel instructed by D J Webb & Co

For the Respondent: Mr E Tufan, Home Office Presenting Officer

## **DECISION AND REASONS**

1. This is an appeal by the Appellant, a citizen of Nepal, against the determination of First-tier Tribunal Judge Lucas in which he dismissed the Appellant's appeal against the Secretary of State's decision to refuse to vary leave to remain as a Tier 2 (General) Migrant.

2. The application under appeal was made on 4 April 2012 and was refused by reference to paragraph 245HD and Appendix A of the Immigration Rules (HC395) on 21 June 2012. The Appellant exercised his right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Lucas on papers on 12 September 2012 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. His application was refused firstly by Designated Judge McClure and on renewal by Upper Tribunal Judge Warr. Following an application for Judicial Review the decision of the Upper Tribunal to refuse permission to appeal was quashed and on remittal to the Upper Tribunal permission to appeal was granted by Mr C M G Ockelton the Vice President on 14 October 2014.
3. At the hearing before me the Appellant was represented by Mr Khosla and Mr Tufan appeared for the Respondent. Mr Khosla explained that he had spoken with Mr Tufan. The circumstances of this case were agreed to be on all fours with R (on the application of Alvi) v SSHD [2012] UKSC 33. It was clear that the Respondent's decision was not in accordance with the law and that the Appellant's appeal should have been allowed on that basis and that it follows that the First-tier Tribunal made a material error of law. Mr Tufan did not disagree but added that it should be made clear to the Appellant that the Secretary of State will make a new decision based on the Immigration Rules in place from 20 July 2012. Mr Tufan submitted a copy of the Respondent's guidance "*Alvi judgement - how to handle cases*" and referred to page 13 of 24.
4. I agreed that the decision of the First-tier Tribunal contained a material error of law and that the decision would be set aside and remade allowing the Appellant's appeal on the basis that the Respondent's decision was not in accordance with the law.

## **DECISION**

5. This appeal involves a very narrow issue. The Appellant applied for variation of leave to remain as a Tier 2 (General) Migrant. His application was refused because he was not given any points for 'Sponsorship' as the Respondent was not satisfied that the Standard Occupation Classification (SOC) Code provided in his certificate of sponsorship was on the Respondent's website as required under the Respondent's codes of practice.
6. The Appellant argues that the requirement to demonstrate that his job appeared on the list of graduate level occupations as stated in the Codes of Practice is unlawful as the Codes of Practice, at the time of the Respondent's decision, had not been

laid before Parliament in accordance with section 3(2) Immigration Act 1971.

7. The Appellant's argument, as submitted by Mr Khosla is on all fours with the Supreme Court decision in Alvi. The Respondent recognises this fact and following Alvi has amended the Immigration Rules so as to ensure that requirements to be met by applicants for leave to enter or remain are contained in the Immigration Rules. By not recognising that the requirement upon which the Respondent based her decision to refuse leave to remain was unlawful the First-tier Tribunal materially erred in law and I set aside the decision.
8. It being accepted that the Respondent's decision was not in accordance with the law it follows that I must remake the decision on that basis and in doing so I allow the Appellant's appeal.

### **Summary**

9. I set aside the decision of the First-tier Tribunal.
10. I remake the decision and I allow the Appellant's appeal.

**Signed:**

**Date: 21 November 2014**

**J F W Phillips  
Deputy Judge of the Upper Tribunal**