



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

Appeal Number: IA/26252/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 31 March 2014  
Delivered orally**

**Determination  
Promulgated  
On 07<sup>th</sup> April 2014**

**Before**

**UPPER TRIBUNAL JUDGE GOLDSTEIN**

**Between**

**BADRUDDIN AHMED SIDDIQUEE**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: The Appellant in person

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge R A Jones who, sitting at Taylor House on 20 December 2013 and in a subsequent determination promulgated on 17 January 2014 (and whilst dismissing the appeal of the claimant, a citizen of Bangladesh,

against the Secretary of State's decision dated 11 June 2013 to refuse to vary the claimant's leave as a Tier 4 (General) Student) allowed the appeal to the extent that the associated Section 47 removal decision was not in accordance with the law.

2. In granting permission to appeal that part of the decision, First-tier Tribunal Judge R A Cox unequivocally had this to say:

"The point is a simple one. The Judge undoubtedly materially misdirected himself in law. The Respondent's decisions were made on 11 June 2013, that is to say after Section 51 of the Crime and Courts Act 2013 came into force on 8 May 2013. Therefore the removal decision under Section 47 of the 2006 Act was, contrary to the Judge's understanding, in accordance with the law."

3. Mr Melvin on behalf of the Secretary of State not surprisingly relied on the grounds and the observations of the First-tier Judge who granted the Secretary of State permission to appeal. He maintained that it was indeed a material error of law that the First-tier Judge, having dismissed the claimant's substantive immigration appeal should have nonetheless allowed the appeal in terms of Section 47 given the legislation to the contrary that indeed had been in force some five to six months before the hearing of the appeal before the First-tier Judge and therefore something that with great respect to the Judge, of which he should have been aware.
4. I made a point of explaining to Mr Siddiquee that the purpose of the hearing before me was solely to determine whether or not the decision of the First-tier Judge in allowing the claimant's appeal in terms of Section 47 was an error of law material to the outcome of that particular decision. I further explained to him the basis of the Secretary of State's grounds of challenge and the observations of the First-tier Judge who granted permission (as stated above). Having ensured that he understood the purpose of the hearing, Mr Siddiquee informed me that he therefore appreciated that as a matter of law this Tribunal had no alternative but to allow the Secretary of State's challenge to the First-tier Judge's decision.
5. It was readily apparent to me that in common with the First-tier Judge who granted permission to appeal and for like reason, the First-tier Judge did indeed materially err in law.

## **Conclusion**

6. The making of the decisions of the First-tier Tribunal in dismissing the appeal of the Respondent under the Immigration Rules and under Article 8 of the ECHR did not involve the making of an error on a point of law. I do not therefore set aside those decisions.
7. The making of the decision of the First-tier Tribunal allowing the appeal against the decision to remove the Respondent under Section 47 of the

Immigration, Asylum and Nationality Act 2006 did involve the making of an error on a point of law.

8. I set aside that decision.
9. I remake that decision in the appeal by dismissing it.

Signed

Date 3 April 2014

Upper Tribunal Judge Goldstein