



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

Appeal Number: IA/02613/2013

THE IMMIGRATION ACTS

**Determined without a hearing
at Field House
on 3rd September 2013**

**Determination promulgated
On 4th September 2013**

Before

UPPER TRIBUNAL JUDGE SPENCER

Between

S M JAHANGIR ALAM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The appellant is a citizen of Bangladesh, born on 31st December 1983. His appeal against the decision of the respondent, made on 7th January 2013, refusing his application for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant under paragraph 245ZX of HC 395, as amended, was dismissed after a hearing before First-tier Tribunal Judge Dean, in a determination promulgated on 30th April 2013.
2. On 2nd July 2013 I granted permission to appeal on the following grounds:

“As the First-tier Tribunal judge correctly pointed out in paragraph 11 of her determination, the change to the immigration rules under which the respondent purported to refuse the application, was effected by paragraph 458 of HC 760. What she failed to notice, however, were the transitional provisions contained in HC 760. Paragraph 458 was not expressly listed as a paragraph which applied to all applications decided after 13th December 2012 and the First-tier Tribunal judge failed to heed the provision in HC 760 which stated that in respect of the other changes set out in the Statement, if an applicant had made an application for entry clearance or leave before 13 December 2012 and the application had not been decided before that date, it would be decided in accordance with the Rules in force on 12 December 2012. “

3. I indicated that for the reasons which I had given I had taken the provisional view that the appeal should be allowed and that the decision of the First-tier Tribunal should be re-made by allowing the appeal without a hearing. I invited submissions to the contrary to be made to the Upper Tribunal within 21 days of the date of the order. No submissions to the contrary have been received by the Upper Tribunal.
4. The appellant’s application was made on 18th September 2012. Accordingly pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I am satisfied that the decision of the First-tier Tribunal contained a material error on a point of law as identified in the grounds of appeal and grant of permission to appeal. Therefore I set aside the determination of the First-tier Tribunal dismissing the appeal. I am satisfied that the appellant complied with the requirements of paragraph 245ZX of HC 395, as amended and accordingly I re-make the decision by allowing the appeal under the immigration rules.

Signed

Dated

P A Spencer
Judge of the Upper Tribunal