



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/04702/2013

**THE IMMIGRATION ACTS**

Heard at Field  
On 7 August 2013

Determination Promulgated  
On 20 August 2013

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

MR SAFDAR HUSSAIN

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: In person  
For the Respondent: Mr J Parkinson, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The respondent has been granted permission to appeal the determination of First-tier Tribunal Judge Adio allowing the appeal of the appellant against the refusal of the

respondent on 24 January 2013 to vary his leave to remain in the UK and to remove him by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The decision by the judge to allow the appellant's appeal in respect of the decision under Section 47 as not being in accordance with the law was not challenged by the respondent.
3. The appellant is a citizen of Pakistan born on 20 June 1979. He first entered the UK on 19 November 2009 with leave to enter as a Tier 4 (General) Student from 30 October 2009 until 28 March 2011. On 5 April he was granted further leave to remain as a Tier 4 (General) Student until 31 May 2012. On 3 April 2012 he made an application for leave to remain as a Tier 1 (Post-Study Work) Migrant under the points-based system (PBS).
4. On 24 January 2013 the respondent made a decision to refuse the appellant's application on the basis that on the evidence provided, and confirmation from London College of Business, as of 23 January 2013 he had not been awarded his eligible qualification. He was therefore not awarded the 15 points claimed by him.
5. The judge at paragraph 16 of his decision noted that the respondent had not received a notification of award as at the date of decision to show that the appellant had a qualification of Masters of Business Administration awarded by the University of Wales. He also noted that there was no satisfactory evidence that the appellant obtained the eligible award within twelve months of the application as decided by the case of **Khatel and Others (S85A; effect of continuing application)**. The appellant received the notification of award on 18 February 2013, which was after the date of the respondent's decision. The judge concluded that in those circumstances the appellant could not meet the requirements of paragraph 245FD of the Immigration Rules.
6. The judge then said at paragraph 17 that there was another aspect to the appellant's case. The case of **Khatel** clearly notes that evidence which was received before the date of decision should be considered as a continuing application with regards to the post-study work migrant application. It was accepted by the HOPO below that the respondent had received a letter from the appellant's solicitors asking the respondent to take into account the very busy period of the Christmas and New Year holidays and that there was likely to be a two to three week delay in the results being published. The judge found that the failure of the respondent to refer to this letter in the Reasons for Refusal Letter raised the issue of whether the respondent had been fair in consideration of the appellant's case. The judge said that the respondent may well have been within her rights to state that the appellant had been given enough time and therefore the letter was of no effect, however this was not the case here. The respondent simply did not consider the letter which was sent to request for extra time.

7. The judge took the view that the college let the appellant down by delaying its publication of his results. It took an excessive amount of time to release the results for his first unsuccessful thesis as well as the second successful thesis. However, in view of the fact that the respondent did not provide a reasoned decision with regard to the request for an extension made by the appellant, the judge found that the respondent's decision was not in accordance with the law and allowed the appellant's appeal.
8. The grounds on which permission was granted to the respondent argued that there is no legal duty (and certainly no duty on fairness grounds in decision-making) on the Secretary of State to consider a request for further time to provide evidence, let alone to provide reasons for denying such a request. The First-tier Tribunal's decision would indicate that an application represents a door which can be indefinitely propped open by an applicant by making requests for more time. In this instance the Secretary of State's legal position is that the notice of award needed to have been provided with the application originally lodged, so a request for an extension of time was bound to fail anyway.
9. Mr Parkinson relied on the Court of Appeal's decision in **Raju & Ors [2013] EWCA Civ 754** which set aside the decision in **Khatel**. The Court of Appeal held that an applicant applying for leave to remain as a Tier 1 (Post-Study Work) Migrant had to have submitted his qualification at the date he made his application. Mr Parkinson submitted that as the appellant did not submit his qualification at the date of application because he did not have it, the judge's determination was fatally flawed and the appellant's appeal could not succeed. Mr Parkinson also relied on the grounds of appeal lodged on behalf of the Secretary of State.
10. The appellant, it appears had made the wrong application. What he needed to do was to make an application for further leave to re-submit his thesis. He said he had sought advice from the college and they said he could make an application for further leave to remain even though he did not have the required qualification. I had some sympathy for the appellant. However, because of the fact that he did not have a qualification which he could have submitted at the time he made his application for further leave to remain as a Tier 1 (Post-Study Work) Migrant, his appeal cannot succeed in light of **Raju**.
11. I find the judge's decision was materially flawed in light of **Raju**. The judge's decision cannot stand. I set it aside and remake it.
12. For the reasons given above, the appellant's appeal is dismissed.

Signed

Date

Upper Tribunal Judge Eshun