



**UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

THE IMMIGRATION ACTS

Heard at Field House, London

On 17th July 2013

Determination

Promulgated

On 26th July 2013

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

MR ZOHAIB KHAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Sulehria

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan who was born on 2nd March 1985. On 23rd March 2012 he made an application for leave to remain as a Tier 4 (General) Student Migrant under the Points-Based System.

2. That application was refused by the Respondent on 31st January 2013 (my emphasis). A reason for refusal letter dated 31st January 2013 (and attached to the file papers) was served on the Appellant.
3. The Appellant appealed that refusal and asked for a hearing on the papers. The matter was dealt with at Manchester by First-tier Tribunal Judge Davies. He allowed the Appellant's appeal in a determination promulgated on 23rd April 2013.
4. The Respondent sought permission to appeal that decision and permission was granted by Upper Tribunal Judge Renton. Thus the matter comes before me.
5. At the hearing before me Mr Avery appeared on behalf of the Respondent and Mr Sulehria on behalf the Appellant. Mr Avery's submission followed the lines of his application seeking permission. He submitted that the First-tier Tribunal Judge's determination was erroneous in law and could not stand, because the Judge had failed altogether to deal with the core evidence, before him.
6. The Respondent's decision in refusal is contained in a letter dated 31st January 2013. Inexplicably the Judge did not connect with that evidence but instead looked at a refusal letter dated 15th October 2012. Accordingly there were no findings made relevant to the decision which had been made by the Respondent and therefore the Judge had erred to such an extent that the matter needed to go back and be reheard afresh.
7. Mr Sulehria tried valiantly to resist this course, but said nothing that could persuade me that the First-tier Tribunal Judge had not fallen into error. It is clear from any reading of the papers that the Judge has taken into account the wrong refusal letter, despite the correct one being there on file.

My Findings

8. I am satisfied that the decision of the First-tier Tribunal Judge contains an error in that the Judge has inexplicably overlooked relevant evidence. Therefore none of the findings made by the Judge can stand. The matter needs to be reheard afresh. This is a case which falls squarely within paragraph 7 of the Senior President's Practice Statement. This matter will therefore be remitted to Manchester Hearing Centre for a fresh hearing before a First-tier Tribunal Judge other than Tribunal Judge Davies.
9. I consider that no further directions are necessary at this stage. Any listing of this appeal is a matter for the Resident Judge in Manchester, who will list according to her procedures.

Decision

10. The decision of the First-tier Tribunal discloses an error on a point of law such that it is set aside and will be remade.

Signed:

Date: 26th July 2013