



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

Appeal Number: IA/19451/2012

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19 June 2013**

**Oral Determination  
Promulgated  
On 28 June 2013**

**Before**

**UPPER TRIBUNAL JUDGE JORDAN**

**Between**

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

Appellant

**and**

**JANAKI PATHIRAJA PATHIRAJA WADUGE**

Respondent

**Representation:**

For the Appellant: Mr P Duffy, Home Office Presenting Officer  
For the Respondent: Miss N M Hashim, Counsel

**DETERMINATION AND REASONS**

1. The Secretary of State appeals against the determination of First-tier Tribunal Judge Russell who allowed the appeal of Ms Waduge under the Immigration Rules. The Secretary of State has appealed and, for the sake of continuity, I shall refer to Ms Waduge as 'the appellant', as she was in the First-tier Tribunal..

2. The appellant is a citizen of Sri Lanka who was born on 30 March 1981. On 11 September 2010 she was granted leave to enter the United Kingdom as a Tier 4 (General) Student. That leave was valid until 30 October 2012. On 24 June 2012 during a period of extant leave the appellant made a combined application for further leave to remain in the United Kingdom as a Tier 2 (General) Migrant and for a biometric residence permit.
3. An appellant in the position of this appellant who has leave to enter the United Kingdom in the capacity of a student must satisfy the requirements of paragraph 245HD(d) of the Immigration Rules. Those requirements set out that to qualify for leave to remain as a Tier 2 (General) Migrant an applicant must meet the requirements set out below. Those requirements are contained in 245HD(b)(ii) and they refer to the fact that the applicant has or has last been granted entry clearance to enter or leave to remain as a student. In such circumstances the applicant has to meet the requirements of (d) and those requirements are that:
  - (1) the applicant must have completed and passed -
    - (i) A UK recognised bachelors or masters degree (not a qualification of equivalent level which is not a degree)
    - (ii) A UK postgraduate certificate in education or professional graduate diploma of education (not a qualification of equivalent level), or
    - (iii) the applicant must have completed a minimum of twelve months' study in the UK towards a UK PhD.

The applicant did not meet those requirements in that she told me this morning that she has not obtained a degree. It is a qualification which she has not yet completed. In those circumstances the requirements of paragraph 245HD(d) have not been met.

4. This was mentioned in the refusal dated 24 August 2012. Unfortunately it was overlooked by the Judge who in his determination made no reference to this requirement within the Rules. I am satisfied that that is an error of law and that the result of that is that in allowing the appeal as he did the Immigration Judge erred in law. For these reasons I find that there was a material error and I remake the decision dismissing the appeal. It is no longer necessary for me to deal with the other requirements of the Immigration Rules which may or may not have been met.

## DECISION

The First-tier Tribunal Judge made an error on a point of law and I re-make the decision dismissing the appeal under the Immigration Rules.

ANDREW JORDAN  
UPPER TRIBUNAL JUDGE