



UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER

THE IMMIGRATION ACTS

Promulgated on 21 Aug. 13

Before

**Upper Tribunal Judge Pitt**

Between

**Pirashanth Sriskandaraja**  
(ANONYMITY ORDER NOT MADE)

Appellant

and

**Secretary of State for the Home Department**

Respondent

DETERMINATION AND REASONS

1. I have already issued two Preliminary Decisions and Directions in this matter. As the second dated 22 July 2013 contained the substantive part of the first dated 26 February 2013, I include here only the second, which stated as follows:

1. *I made a preliminary decision and direction in this matter on 26 February 2013 which stated as follows:*

1. *The appellant applied on 3 April 2012 for further leave to remain as a Tier 1 Post Study Work Migrant. On 15 June 2012 he was awarded a BSc in Computing by the University of East London. His application was refused on 27 September 2012. His substantive appeal was dismissed by First-tier Tribunal Judge C J Lloyd in a determination dated 17 December 2012. It*

*was found that the appellant had not obtained his degree within the 12 months prior of the date of his application.*

- 2. This appeal is on all fours with the case of Khatel and others (s85A; effect of continuing application) [2013] UKUT 00044 (IAC). It is the preliminary view of the Tribunal that the decision of the First-tier Tribunal on the substantive variation of leave to remain appeal discloses an error on a point of law should be set aside and remade as allowed.*
  - 3. The First-tier Tribunal was correct to find the Section 47 removal decision not in accordance with the law and that part of the decision should stand.*
  - 4. If either party objects to the preliminary decision on error of law and the variation of leave appeal being allowed, written reasons should be provided within 14 days of the date of issue of this direction.*
  - 5. Where there is no response this will be deemed to be acceptance of the appeal being allowed on the substantive grounds of appeal for the reasons set out above.*
- 2. Neither party responded to that direction but the file was not brought back to me in order for the preliminary decision to be made into a final determination. It was somehow listed for a hearing before Deputy Upper Tribunal Judge Coates in Stoke on 29 May 2013. He, sensibly, sent the matter back to Field House, having seen my preliminary decision of 26 February 2013.*
  - 3. Since my first preliminary decision of 26 February 2013, the Court of Appeal has issued the case of SSHD v Raju [2013] EWCA Civ 754 overturning Khatel. The reasoning was, as stated at [17], that:  
  

*“Paragraph 34G precludes the concept of a continuing application which starts when it is first submitted and concludes at the date of the decision, either of the Secretary of State or, on appeal, of a tribunal.”*

  
*The date of application in this matter is the date that the appellant sent in his application form. He did not have his degree qualification on that date. This was always the sole issue of contention in this matter.**
  - 4. This leads me to make a second preliminary finding, that there can be no error of law in the determination of the First-tier Tribunal and that the appeal to the Upper Tribunal must be dismissed.*
  - 5. I consider it important, if possible, to deal with this matter without a hearing in order to avoid the appellant incurring costs when he cannot succeed. Therefore, if either party objects to the preliminary decision that the error of law*

*appeal must be dismissed, written reasons should be provided within 14 days of the date of issue of this direction.*

6. *Where there is no response this will be deemed to be acceptance of the appeal being dismissed for the reasons set out above.*
2. Following that Second Preliminary Decision and Direction, the appellant wrote to the Tribunal on 7 August 2013. He maintained that it was not fair that administrative failures at the Tribunal had led to the appeal being listed for hearing before Judge Coates in Stoke. This had prevented me from acting upon the first Preliminary Decision which would have led to his appeal being allowed where the respondent had not replied. He maintained that I should still allow the appeal as if it had been brought to me promptly after the first Preliminary Decision had been issued. He did not request an oral hearing of the matter.
3. Whilst having some sympathy with the appellant, I do not consider that I am in a position to put the clock back as he would wish. The appeal is before me now and the case of **Khatel** is no longer good law. The Court of Appeal has indicated that it was misconceived and has given correct approach for dealing with appeals such as this in **SSHD v Raju**.
4. Notwithstanding the appellant's response of 7 August 2013, I do not find an error of law in the determination of the First-tier Tribunal. The appellant did not have his degree on the date on which he submitted his application to the respondent so did not meet the requirements of the Immigration Rules. I dismiss the appeal.

#### Decision

5. The decision of the First-tier Tribunal did not contain an error on a point of law and shall stand.

#### Anonymity

2. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I do not continue that order (with reference to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008). Nothing before me suggests that serious harm to any person will arise from full disclosure.

Signed:

Date: 19 August 2013

Upper Tribunal Judge Pitt