



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

Appeal Number: IA/02770/2012

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 11<sup>th</sup> December 2013**

**Determination  
Promulgated**

**On 15<sup>th</sup> January 2014**

**Before**

**UPPER TRIBUNAL JUDGE REEDS  
DEPUTY UPPER TRIBUNAL JUDGE J FRANCES**

**Between**

**MR ARJAN AVDABHAI KHUNTI**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Mehta, Malik & Malik Solicitors  
For the Respondent: Mr S Walker, Senior Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant, a citizen of India born on 3<sup>rd</sup> January 1986, appeals with permission the decision of the First-tier Tribunal (Judge Monro) who in a determination promulgated on 11<sup>th</sup> September 2013 dismissed his appeal against the decision made on 22<sup>nd</sup> December 2011 to refuse to vary leave

to remain in the UK as a Tier 4 (General) Student Migrant under the points-based system.

2. The history of the appeal is as follows. On 9<sup>th</sup> July 2009 the Appellant was granted leave to enter the UK as a Tier 4 (General) Student until 30<sup>th</sup> October 2011. He entered the United Kingdom on 28<sup>th</sup> July 2009. Following the conclusion of his studies, the Appellant made a further application in time for further leave on 29<sup>th</sup> June 2011 as a Tier 4 (General) Student Migrant to study for a Graduate Diploma in Commercial Management, such course to run from 4<sup>th</sup> July 2011 until 30<sup>th</sup> June 2014.
3. That application was refused by the Respondent in a decision dated 22<sup>nd</sup> December 2011 under paragraph 245ZX(c) of the Immigration Rules on the grounds that the Respondent was not satisfied that the Tier 4 Sponsor had ensured that the Appellant was competent in the English language at a minimum of level B2 of the CEFR or that he met any alternative requirement. Thus the Appellant had not been awarded 30 points under Appendix A of the Immigration Rules.
4. The Appellant submitted Grounds of Appeal on 26<sup>th</sup> January 2012 following that decision but for reasons that have been unexplained, the appeal did not come before the First-tier Tribunal for a significant period until 11<sup>th</sup> September 2013 almost two years after the decision made by the Respondent. The appeal was determined on the papers by the First-tier Tribunal and in a determination promulgated on 13<sup>th</sup> September 2013, the appeal was dismissed under the Immigration Rules for the reasons set out in the determination at paragraphs 11 - 12 on the basis that the CAS made no mention of the Appellant's English language ability. In respect of the Appellant's argument that at the time of the application and the decision that there was no requirement for such an assessment to be carried out, the judge noted that that had not been set out in the Grounds of Appeal and that the Appellant had not provided any evidence in support of that assertion. The appeal was also dismissed on human rights grounds.
5. The Appellant sought permission to appeal that decision and permission was granted by an Upper Tribunal Judge on 14<sup>th</sup> November 2013. Thus the matter came before the Upper Tribunal. It appears that the Appellant had been unrepresented at the time of the application for permission to appeal but had secured representation for this hearing at a late stage by Mr Mehta, who provided a recent letter of authority to the Tribunal. The Respondent was represented by Mr Walker, Senior Presenting Officer. Mr Mehta relied upon the grounds submitted and provided a copy of the Appellant's witness statement which had been submitted to the First-tier Tribunal dated 11<sup>th</sup> June 2013 where at paragraph 5, the Appellant made reference to his position that there had been no requirement for an English assessment at the time for the CAS and had not been part of the Immigration Rules at the relevant time. Neither representative had copies of the relevant Immigration Rule in force or the guidance and thus the parties requested a short period of time to consider those documents.

6. Mr Walker conceded that there was an error of law in the decision of the First-tier Tribunal and the decision of the Secretary of State could not stand. He stated that the requirement had not been placed in the Rules (which had not changed until 6<sup>th</sup> June 2012) that had been in guidance. For the reasons given in the decision of **R (on the application of Alvi) v SSHD [2012] UKSC 33** the requirement was one that amounted to a condition of succeeding under the Rule and as it had been in the guidance and not laid before Parliament the Secretary of State could not rely upon it.
7. On the basis of the concession made by Mr Walker, it was further common ground between the parties that there had been no other reason advanced on behalf of the Secretary of State for refusing the application and therefore the appeal should be allowed.
8. For those reasons, and in the light of the concession made by Mr Walker we remake the decision allowing the appeal.

### **Decision**

9. The Tribunal made an error of law; the decision is remade as follows:- the appeal is allowed.

Signed

Date

Upper Tribunal Judge Reeds