



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

Appeal Number: IA/02998/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 13 January 2014**

**Determination
Promulgated
On 27 January 2014**

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Before

**UPPER TRIBUNAL JUDGE ALLEN
UPPER TRIBUNAL JUDGE P LANE**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AHSAN ULLAH

Respondent

Representation:

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer
For the Respondent: Mr N Butt of SHN Solicitors

DETERMINATION AND REASONS

1. The appellant appeals with permission to the Upper Tribunal against the decision of First-tier Tribunal Judge Gillespie who allowed the respondent's appeal against the appellant's decision of 7 January 2013 refusing to vary leave to enter the United Kingdom. The judge allowed the appeal, on the basis of the decision of the Upper Tribunal in **Khatel** [2013] UKUT 44 (IAC). The respondent had applied on 27 March 2012 for further leave to remain as a Tier 1 (Post-Study Work) Migrant and with the application

submitted a letter from the London College of Business dated 27 March 2012 confirming that he had submitted his dissertation on 5 March 2012 and the results were still awaited. Prior to the appellant's decision the respondent was awarded his MBA on 30 May 2012. The judge concluded that the application was a continuing one until a decision upon it had been made and in light of **Khatel** concluded that the appeal fell to be allowed.

2. It is relevant to note at this stage that on 13 March 2013, prior to the hearing before the judge, the respondent and his representatives were notified that because his appeal had been lodged without a fee and he had not met the deadline for a fee being provided that the Lord Chancellor had revoked the certificate of fee satisfaction and the appeal had been struck out and the Tribunal would take no further action on his appeal.
3. Leaving that point aside for a moment, following the allowing of the appeal by the judge, permission was refused by a judge of the First-tier Tribunal but subsequently, in light of the decision of the Court of Appeal in **Raju** [2013] EWCA Civ 754, which overruled **Khatel**, permission was granted.
4. At the hearing Mr Walker handed up a document which indicated that the respondent had been arrested in the Republic of Ireland on 4 December 2013 for being in that state unlawfully and was due to appear in court on 22 January 2014. Mr Butt said that he had had contact with the respondent and he said he had been to Ireland, was arrested and released and had been there for one day.
5. We explained that in the circumstances it seemed clear that the appeal fell to be dismissed on the basis of statutory abandonment under section 104 of the 2002 Act. In any event it was also clear that the appeal had been struck out on 13 March 2013, albeit a matter not realised by the parties to the litigation as it seems, and as a consequence the judge had no jurisdiction to proceed to hear the appeal. In any event, in light of what was said in **Raju** by the Court of Appeal and subsequently by the Upper Tribunal in **Nasim** [2013] UKUT 00610 (IAC), it is clear on the basis of these authorities that the appellant's appeal, even if we had jurisdiction to hear it, would be bound to succeed, but on the basis of the abandonment point we conclude that there was no valid appeal before the First-tier Judge and therefore he had no jurisdiction to make the decision he did. It is also clear from the decision of the Court of Appeal in **MM (Ghana)** [2012] EWCA Civ 827 that leaving the country for as short a period as a day would be enough to constitute abandonment. For all these reasons therefore we conclude that the First-tier Tribunal had no jurisdiction to adjudicate on the respondent's appeal to it but even if it had had, that appeal falls to be dismissed either on the basis that it was abandoned or on the basis that it falls foul of the findings in **Raju** and **Nasim**.

Signed
Upper Tribunal Judge Allen

Date