Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/21228/2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 25th February 2014	**On 4th March 2014**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR ALEX BOATENG OMARI

Respondent

Representation:

For the Appellant: Mr G Saunders (Senior Presenting Officer)
For the Respondent: Mr F Bajwa (Bajwa & Co Solicitors)

DETERMINATION AND REASONS

1. The Respondent, Mr Alex Boateng Omari is a national of Ghana born on 5th December 1980. He was granted leave to enter the UK as a Tier 4 (General) Student on 13th April 2010 until 25th August 2012.

2. On 5th April 2012 he applied for leave to remain in the United Kingdom as Tier 1 (Post-Study) Migrant but his application was refused by the Secretary of State on 21st September 2012 under paragraph 245FD and a decision to remove was made under Section 47 of the Immigration, Asylum and Nationality Act 2006.

3. The basis for that refusal was that the Respondent had made his application under Tier 1 on 5th April 2012 however from verifying the date of award the documentation provided confirmed the date of the award was 24th July 2012. The decision cited the Upper Tribunal decision of **NO (Post-Study Work – award needed by date of application) Nigeria [2008] UKIAT 0054** that the applicant must have been awarded the qualification at the date of the application and that the Immigration Rules state that the date of the award must be within the twelve months directly prior to the date of the application and the date of the award is after that date. The claimed points under Appendix B English language were refused due to the failure to meet the requirement for the eligible award.

4. He exercised his right to appeal that decision and his appeal was dismissed by the First-tier Tribunal (Judge Parker) in a determination promulgated on 19th December 2012. He set out his findings at paragraphs 6–13 as follows:

> "6. I have had regard to all the evidence before me including that submitted at the hearing. I have considered the evidence of the Appellant's qualification. A letter from Roehampton University dated 25th July 2012 was included in the Respondent's bundle at C1. It was addressed to the Appellant at an address in Italy. The letter stated:
>
> > 'Dear Mr Omari,
> >
> > I am pleased to inform you that the Postgraduate Awards and Progression Board met on 24th July 2012 and recommended that you be awarded a masters in business administration (merit) …'
>
> 7. Although this document was included in the Respondent's bundle it could not have been submitted with the application as it postdates the date of the application.
>
> 8. Further evidence of the Appellant's qualification included his academic profile which was printed from Roehampton University's database. This confirmed that the Appellant successfully completed his masters in business administration at the City Banking College and that his last modules were passed in February 2012. However the 'status date' (presumably the date upon which the paper is printed) is recorded as 24th July 2012. There was nothing on the profile to confirm what was meant by 'status date'. The Appellant further submitted a letter dated 4th April 2012 from the City Banking College which reads as follows:
>
> > 'This serves to confirm that the above commenced classes on 12th April 2010 and completed the University of Roehampton master in business administration programme on 23rd February 2012.

> This will be further confirmed about his progress at University Examinations Board which will be held in July 2012. Thereafter he will be awarded his certificate.'

Attached to this were marking sheets in respect of the Appellant's dissertation and which was signed off by the markers on 22nd February 2012 and 16th February 2012.

9. An extract of the policy, from partway through paragraph 62 to paragraph 68 was submitted and relied upon by the Appellant. It reads as follows:

> 'We will not accept provisional certificates.
>
> If the certificate has yet to be issued, the applicant will be unable to provide the original certificate of the award. In these circumstances the applicant must provide
>
> (ii) an original letter from the institution at which the applicant studied towards his/her eligible qualification. The letter must be an original letter (not a copy) on the official letter-headed paper of the UK institution at which the applicant studied. It must have been issued by an authorised official and must confirm the:
>
> - applicant's name;
> - title of the qualification;
> - date of the award (as defined in paragraph 79 of the guidance notes);
> - the body awarding the qualification;
> - explain why the applicant is unable to provide their original certificate of award; and
> - confirm that the certificate will be issued.'

10. I have considered whether the evidence submitted by the Appellant of his qualification is adequate so as to meet the requirements of the Immigration Rules and/or policy guidance. Whilst I am satisfied that the Appellant completed his course in February 2012, the decision by the awarding body to award his qualification was not made until July 2012. The letter dated 4th April 2012 from his college states that the Appellant completed his programme on 23rd February 2012 but goes on to say (verbatim):

> '… This will be further confirmed about his progress at University Examinations Board which will be held in July 2012. Thereafter he will be awarded his certificate.'

11. This paragraph is not particularly literate or clear. However, it appears that the Examinations Board would meet in July 2012 to 'confirm his progress' and a certificate would be awarded thereafter. In the letter, dated 25th July 2012, from the Appellant's college (at C1 in the Respondent's bundle) it is stated that the Postgraduate Awards and Progression Board:

> 'met on 24th July 2012 and recommended that you be awarded a masters in business administration (merit).'

12. I find that this is evidence that no final decision was made as to whether or not the Appellant would be awarded his qualification until the meeting of the Board. Accordingly I am not satisfied that this is a situation where the Appellant had been awarded his qualification but had not been issued with a certificate by the time he applied for further leave to remain. I am not satisfied that he has been awarded his qualification at the date of the application as the Examination/Postgraduate Awards and Progression Board had not met – and did not meet until several months later.

13. I further note that the Respondent's policy requires any letter from the institution to explain the reason why the applicant was unable to provide the original certificate of award. The letters from Roehampton University confirm, inter alia, that no certificate (original or otherwise) was available as the qualification had not been awarded. I am not satisfied that the policy assists this Appellant as his college had not decided to award his qualification when the application was made."

5. Thus he dismissed the appeal under the Immigration Rules and on human rights grounds (at paragraphs 14–15).

6. He did not deal with the appeal against removal decision made in respect of him, in purported pursuance of Section 47 of the Immigration, Asylum and Nationality Act 2006.

7. The Respondent sought permission to appeal the decision and permission was refused by FFT Judge Sommerville on 17th January 2013 but on further submission to the Upper Tribunal, permission was granted by Upper Tribunal Judge Chalkley on 22nd March 2013.

8. The appeal came before the Upper Tribunal (Deputy Upper Tribunal Judge Monson), and the Respondent secured a decision in his favour in the Upper Tribunal in respect of his appeal against the decision of the Secretary of State to refuse to vary leave to remain in the United Kingdom, because that Tribunal followed the approach adopted by Blake J, President and Upper Tribunal Judge Coker in **Khatel and Others (s85A; effect of continuing application) [2013] UKUT 00044 (IAC)**.

9. The Secretary of State applied for permission to appeal to the Court of Appeal against the determination of the Upper Tribunal. At the time she did so, permission to appeal to the Court of Appeal had been granted by the Upper Tribunal in respect

of **Khatel**. The Respondent's grounds of application reiterated the critique of **Khatel** contained in the grounds of application submitted in that case.

10. As set out in the decision of the Upper Tribunal in **Nasim and Others (Raju: reasons not to follow?) [2013] UKUT 00610(IAC)** at paragraphs 3–5, 200 applications for permission to appeal to the Court of Appeal were made by the Secretary of State in respect of determinations of the Upper Tribunal, allowing appeals (or dismissing the Respondent's appeals) on the basis of **Khatel**. It appears that a significant number of applications for permission to appeal to the Upper Tribunal were made by the Secretary of State against decisions of the First-tier Tribunal, applying **Khatel**.

11. Since it was known that permission to appeal in **Khatel** had been granted (with arrangements made for the Court of Appeal to expedite the hearing in that court), it was considered appropriate to consider the Respondent's permission applications once the judgments of the Court of Appeal became known.

12. On 25th June 2013, the Court of Appeal allowed the Secretary of State's appeal against the Upper Tribunal's determinations in **Khatel** and the cases of three other immigrants: **Raju and Others v SSHD [2013] EWCA Civ 754**.

13. As a result, the Tribunal gave directions in the cases before it where the Respondent had applied for permission to appeal to the Court of Appeal. The Tribunal did so pursuant to Rule 45(1)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008:-

> "**45.**—(1) On receiving an application for permission to appeal the Upper Tribunal may review the decision in accordance with rule 46 (review of a decision), but may only do so if—
>
> …
>
> (b) since the Upper Tribunal's decision, a court has made a decision which is binding on the Upper Tribunal and which, had it been made before the Upper Tribunal's decision, could have had a material effect on the decision."

14. The Upper Tribunal's directions indicated that it proposed, in the light of **Raju,** to review the determinations of the Upper Tribunal, set them aside and re-make the decisions in the appeals by dismissing them. The directions made plain that the Appellants would be (or continue to be) successful in their appeals against removal decisions made in respect of them, in purported pursuance of Section 47 of the Immigration, Asylum and Nationality Act 2006. This was because those decisions were unlawful (**Secretary of State for the Home Department v Ahmadi [2013] EWCA Civ 512**).

15. Further directions were sent out by the Upper Tribunal as follows: On 21st January 2014, the Tribunal issued directions in the following terms:

1. Any directions previously given by the Upper Tribunal in these proceedings are hereby revoked.

2. The parties shall prepare for the forthcoming hearing in the Upper Tribunal on the basis that the issues to be considered at that hearing will be as follows:

   (a) whether the determination of the Upper Tribunal, made by reference to the determination in **Khatel and Others (s85A; effect of continuing application) [2013] UKUT 00044 (IAC)**, should be set aside in light of the judgment of the Court of Appeal in **Raju and Others v Secretary of State for the Home Department [2013] EWCA Civ 754** (as to which, see **Nasim and Others (Raju: reasons not to follow?) [2013] UKUT 00610 (IAC)**);

   (b) if so, whether there is an error of law in the determination of the First-tier Tribunal, such that the determination should be set aside; and

   (c) if so, how the decision in the appeal against the immigration decisions should be re-made (see **Nasim and Others**).

3. The party who was the Appellant in the First-tier Tribunal is directed to serve on the Upper Tribunal and the Respondent, no later than seven days before the forthcoming hearing, all written submissions and written evidence (including witness statements) on the issue of Article 8 of the ECHR, upon which they will seek to rely at that hearing (where necessary, complying with Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

16. In compliance with those directions issued by the Upper Tribunal, further evidence and submissions were received by the Tribunal on behalf of the Respondent on 17th February 2014.

17. Thus the appeals were listed before the Upper Tribunal.

18. At the hearing before the Tribunal the Secretary of State was represented by Mr G Saunders, a Senior Presenting Officer and the Respondent by Mr F Bajwa, who appeared for the Respondent before the First-tier Tribunal. Mr Saunders on behalf of the Secretary of State submitted that he relied upon the grounds that had been provided and that on the basis of the decision of the Court of Appeal in **Raju and Others** taken with the most recent Upper Tribunal decision in **Nasim and Others** (1 and 2) the Appellant could not meet the Immigration Rules as the eligible date of the award was in July 2012 and that he had not been awarded the eligible award in the preceding twelve months (in accordance with the decision of **Raju**). He further submitted that the decision of the Upper Tribunal should be set aside. In respect of the decision of the First-tier Tribunal, in the conclusions reached relating to the Immigration Rules and on human rights grounds however he conceded that the judge had failed to deal with the Section 47 removal point which the Secretary of State accepted was unlawful. In respect of that decision Judge Parker noted that the award had not been made until July 2012 and gave adequate reasons which were open to him on the documentation to reach that view. Whilst he had passed his examinations before the application, the correspondence referred to by the judge and

analysed demonstrated that he had not been awarded the qualification until July 2012 and thus he could not meet the Immigration Rules. Thus he invited the Tribunal if necessary to set aside the decision of the First-tier Tribunal and re-make the decision by dismissing the appeal under the Immigration Rules, on human rights grounds but allowing the appeal only on the ground that the Section 47 removal decision was not in accordance with the law.

19. Mr Bajwa on behalf of the Respondent had provided documentation prior to the hearing upon which he sought to rely. It consisted of the following documents, an extract from the Home Office policy guidance and in particular paragraph 79 of that guidance, an extract from the Roehampton University website showing the results of the Appellant in February 2012, and results from City Bank College in February 2012 showing that he had passed his dissertation.

20. He submitted that the decision of the Upper Tribunal proceeded on the basis that the case of **Khatel** should have been applied however he submitted that the Respondent's case had not been argued on **Khatel** principles but on the basis of the policy guidance relying on paragraph 79. On the facts of this case Mr Bajwa submitted, the evidence demonstrated that the Respondent had passed his course in February 2012 as evidenced by the college results and the online University of Roehampton results. In addition, the letter from the college dated 4th April 2012 confirmed that he was entitled to an MBA and any meeting to be held in July 2012 was a mere formality. Such Examination Board meeting could only be seen as a formality as in this Appellant's case there was no other work that was outstanding therefore when the letter stated "further to be confirmed and thereafter will be awarded his certificate" merely underlined that that was the end of the process in formal terms but that before the date of the application he had completed his course. Thus he submitted the Upper Tribunal should have considered the policy guidance and had it done so would have allowed the appeal on those grounds and in those circumstances the decision of **Raju and Others** can be distinguished from this particular appeal.

21. Mr Bajwa also submitted a copy of a determination of the First-tier Tribunal (Judge Frankish) after a hearing on 5th December 2012 relating to another Appellant. Mr Bajwa submitted that this appeal in which he appeared on behalf of that particular Appellant who also undertook the same course as the present Respondent, was found to have satisfied the Rules on the basis that the decision of **NO** could be distinguished. In that case the Appellant had yet to complete and pass his dissertation whereas the Appellant had completed his course by 23rd February and all the results had been provided and that as noted at paragraph 13: "The college letter dated 4th April 2012 records that the Appellant's qualification was in the bag, it depended upon no contingencies, the Examination Board meeting in July 2012 was a mere formality". Thus Mr Bajwa submitted that an Appellant on the same facts had had his appeal allowed. Notwithstanding that determination he submitted that the Appellant had demonstrated that he had met the Rules by relying on the policy guidance at paragraph 79 and therefore was entitled to succeed under the Immigration Rules. He confirmed that there were no submissions to be made in respect of Article 8 of the ECHR.

22. Mr Saunders by way of reply reiterated that the documentation only demonstrated that the qualification would be awarded in July. He further submitted that if the meeting of the Board in July was a "formality" it was a necessary one on which the award was made and that if the guidance meant that the date of the award was at such a point in time it would have said so. In those circumstances he submitted that the Upper Tribunal decision was wrong in law and that the decision of the First-tier Tribunal should be upheld.

23. I reserved my determination that I now give.

24. The relevant Rule, paragraph 245FD reads as follows:-

> "To qualify for leave to remain as a Tier 1 (Post-Study Work) Migrant, an Applicant must meet the requirements listed below. Subject to paragraph 245FE(a)(i), if the Applicant meets these requirements, leave to remain will be granted. If the Applicant does not meet these requirements, the application will be refused.
>
> Requirements:
>
> (a) The Applicant must not fall for refusal under the general grounds of refusal, and must not be an illegal entrant.
>
> (b) The Applicant must not previously have been granted entry clearance or leave to remain as a Tier 1 (Post-Study Work) Migrant.
>
> (c) The Applicant must have a minimum of 75 points under paragraph 66–72 of Appendix A."

25. Paragraphs 66 to 72 of Appendix A were as follows:-

> "ATTRIBUTES FOR TIER 1 (POST-STUDY WORK) MIGRANTS
>
> 66. An Applicant for entry clearance or leave to remain as a Tier 1 (Post-Study Work) Migrant must score 75 points for attributes.
>
> 67. Available points are shown in Table 10.
>
> 68. Notes to accompany the table appear below the table.
>
> Table 10

Qualifications	Points
The Applicant has been awarded: (a) a UK recognised bachelor or postgraduate degree, or (b) a UK postgraduate certificate in education or Professional Graduate Diploma of Education, or	20

(c) a Higher National Diploma ('HND') from a Scottish institution	
(a) The Applicant studied for his award at a UK institution that is a UK recognised or listed body, or which holds a Sponsor licence under Tier 4 of the Points Based System, or (b) If the Applicant is claiming points for having been awarded a Higher National diploma from a Scottish Institution, he studied for that diploma at a Scottish publicly funded institution of further or higher education, or a Scottish bona fide private education institution which maintains satisfactory records of enrolment and attendance. The Scottish institution must: (i) be on the list of Education and Training Providers list on the Department of Business, Innovation and Skills website, or (ii) hold a Sponsor licence under Tier 4 of the Points Based System.	20
The Applicant's period of UK study and/or research towards his eligible award were undertaken whilst he had entry clearance, leave to enter or leave to remain in the UK that was not subject to a restriction preventing him from undertaking a course of study and/or research.	20
The Applicant made the application for entry clearance or leave to remain as a Tier 1 (Post-Study Work) Migrant within 12 months of obtaining the relevant qualification or within 12 months of completing a United Kingdom Foundation Programme Office affiliated Foundation Programme as a postgraduate doctor or dentist.	15
The Applicant is applying for leave to remain and has, or was last granted, leave as a Participant in the International Graduates Scheme (or its predecessor, the Science and engineering Graduates Scheme) or as a Participant in the Fresh Talent: Working in Scotland Scheme.	75

QUALIFICATION: NOTES

69. Specified documents must be provided as evidence of the qualification and, where relevant, completion of the United Kingdom Foundation Programme Office affiliated Foundation Programme as a postgraduate doctor or dentist.

70. A qualification will have been deemed to have been 'obtained' on the date on which the Applicant was first notified in writing, by the awarding institution, that the qualification had been awarded."

26. The Respondent's Tier 1 (Post-Study Work) published policy guidance, as in force immediately before 6th April 2012. The relevant extract relied upon by Mr Bajwa is as follows:

"**Date of eligible qualification/Completion date of United Kingdom Foundation Programme.**

78. An applicant can claim 15 points if the eligible qualification was obtained within the 12 months immediately before his/her application for entry clearance or leave to remain under Tier 1 (Post-Study Work) or if his/her application for entry clearance or leave to remain is being made within 12 months of completing a United Kingdom Foundation Programme Office affiliated Foundation Programme as a postgraduate doctor or dentist.

79. The date of award is taken as the date on which the applicant was first notified, in writing, by the awarding institution, that the qualification has been awarded. This notification may have been made in writing, directly to the applicant, or by the institution publishing details of the award, either in writing (for example, via an institution notice board) or electronically (for example, on the institution's website). Where the notification was not in the form of direct correspondence to the applicant, we will require direct confirmation of the date of award from the institution in writing.

80. We do not accept the date of award as the date of graduation.

81. Providing the date of award of the eligible qualification is no more than 12 months before the date of application, 15 points will be awarded for this attribute.

82. Applicants may submit an application for leave to remain before the completion of his/her Foundation Programme provided that he/she **will** complete the Foundation Programme, no more than 30 days after submitting this application

Documents required

83. In order to score 15 points for this attribute, the specified evidence the applicant must provide is:

    a) original document from the institution at which the applicant studied towards his/her eligible qualification or Foundation Programme as a postgraduate doctor of dentist (where the applicant is applying within 12 months of this period).

    The letter must be an original letter (not a copy), on the official letter- headed paper of the United Kingdom institution at which the applicant studied. It must have been issued by an authorised official and must confirm the:

    - applicant's name;
    - title of the qualification;
    - start and end dates of the applicant's period/s of study and/or research for this qualification at the United Kingdom institution; and date of award (as defined in paragraph 79 of these guidance notes).

> 84. If the applicant has already provided an original letter in support of points claimed for the other attributes, then the same letter is acceptable as evidence in support of this attribute, providing it contains all the required information."

27. There is no dispute concerning the facts of this appeal. The Respondent embarked upon a Masters in Business Administration at the City Banking College full-time for a period of one year. He completed his studies culminating in a dissertation on 23rd February 2012. The oral evidence that he gave before the First-tier Tribunal was that the results from the final examinations are not uploaded onto the college's website straightaway and that when he applied for further leave on 5th April 2012, his marks were not available online. Mr Bajwa has provided a copy of the Respondent's academic profile (such report created 12th November 2012) in which he states demonstrates that those marks for his two modules in February 2012 were uploaded to the website, albeit at a later date and not before the date of his application. As noted by the First-tier Judge, the academic profile printed from Roehampton University's database confirms that he successfully completed his MBA at the City Banking College and the last modules were passed in February 2012 but the "status date" was recorded as 24th July 2012. There is nothing on the profile to confirm what was meant by the "status date".

28. It is therefore submitted on behalf of the Appellant that the academic profile in conjunction with the letter dated 4th April 2012 from City Banking College demonstrates that prior to the date of the application he had been notified of his award.

29. At this point it is necessary to set out the letter of 4th April 2012 from City Banking College. It reads as follows:-

> "This serves to confirm that the above commenced classes on 12th April 2010 and completed the University of Roehampton master in business administration programme on 23rd February 2012.
>
> This will be further confirmed about his progress at University Examinations Board which will be held in July 2012. Thereafter he will be awarded his certificate."

30. It is further necessary to consider a document that is in the Respondent's bundle at C1 from the Appellant's college. That document states that the Postgraduate Awards and Progression Board:-

> "… met on 24th July 2012 and recommended that you be awarded a masters in business administration (merit)."

31. I have considered that evidence in the light of the guidance relied upon by Mr Bajwa and in particular paragraph 79 of that guidance. Having done so, I do not accept the submission that paragraph 79 demonstrates that the Respondent, having been notified by way of his academic profile online, meets the Immigration Rules by showing that he has been awarded his qualification. It is plain from reading paragraph 79 that it states: "The date of award is taken as the date on which the applicant was first notified, in writing, by the awarding institution, that the qualification has been

awarded." The information set out and notified to the Respondent by the academic profile online merely sets out that he has passed his dissertation but that does not show that "the qualification has been awarded". The letter of 4th April 2012 is clear as to the position namely that whilst he had completed the course on 23rd February 2012, his progress at the University Examinations Board which was to be held in July 2012 was said to be the relevant date because it noted "thereafter he will be awarded his certificate". Furthermore the letter at C1 of the Secretary of State's bundle demonstrates that the Postgraduate Awards and Progression Board met on 24th July 2012 and recommended that the Appellant be awarded a masters in business administration. Paragraph 79 was specifically dealt with by the Upper Tribunal in the decision of **Nasim and Others** at paragraphs 77 to 81 of that determination. The Tribunal considered the meaning of the word "award" and reached the conclusion that it was sufficiently established at paragraph 79 of the guidance. The Tribunal said this:-

> "79. With regard to Mr Jafar's argument that the meaning of the word 'award' is unclear, we consider that this is sufficiently established at paragraph 79 of the Guidance. The date of the award is as set out: the date on which the applicant was first notified, in writing, by the awarding institution, that the qualification has been awarded. This has to be seen together with paragraph 80, which makes it clear that the date of the graduation is not accepted as the date of the award. Although these matters are concerned with dates of award rather than definition of the term 'award', it seems to us sufficiently clear that what is referred to here is the conferring of the degree, whether in person or in absentia, on the person who has fulfilled the requirements of that degree. We do not accept that the terminology employed in the May 2012 CI at paragraph 6 (see [16] above) is other than a paraphrase of paragraph 79 of the policy guidance set out above. It would be surprising if a Casework Instruction issued on 23rd May 2012 concerning applicants who had applied before 6th April 2012 prior to their qualification being awarded would be intended to differ materially from the terms of Guidance which was in force immediately before 6th April 2012."

32. Therefore it is plain from the decision of the Tribunal in **Nasim** that the notification in writing must be by the awarding institution "that the qualification has been awarded". The evidence in this case does not demonstrate the qualification was awarded; that did not happen until July 2012 merely that he had passed his examinations. For those reasons, I do not consider that the submissions of Mr Bajwa demonstrates that he met the policy guidance and that he had been awarded the eligible qualification before he had made his application on 5th April 2012.

33. Mr Bajwa has also relied upon a determination of the First-tier Tribunal (Judge Frankish) in which an Appellant in the same circumstances as the present Respondent had his appeal allowed on the argument that had been advanced by Mr Bajwa before the First-tier Tribunal and the argument that he has advanced before this Tribunal. The challenge on the basis of "inconsistent decision making" was dealt with by the Upper Tribunal in the decision of **Nasim and Others (Article 8) [2014] UKUT 0025 (IAC)** at paragraphs 30 to 36. As noted at paragraph 32, the Tribunal consider that the Appellants in the appeals had not begun to make out their case in

respect of inconsistent decision making and at paragraph 34 found that the evidence did not demonstrate a systemic inconsistency in relevant decision making by the Respondent. I would similarly record that there is no evidence before this Tribunal to come anywhere near to demonstrating that there was any systemic inconsistency in the relevant decision making by the Respondent or indeed by the First-tier Tribunal. The fact that one judge in the First-tier Tribunal allowed the appeal on similar facts does not mean that the decision was necessarily a correct one in law. There is no further evidence before the Tribunal as to what has happened to that particular appeal and that by itself, cannot demonstrate that this Respondent is able to meet the Immigration Rules.

34. For those reasons, I am satisfied that the decision of the Upper Tribunal was wrong in law because the Respondent could not satisfy the requirements of the Rules because he could not show that he had obtained the eligible award within twelve months of last being given leave. The application having been made on 5th April 2012 but the eligible qualification not being awarded until July 2012. For those reasons and having reviewed the decision of the Upper Tribunal on the basis of the submissions that had been advanced by Mr Bajwa, I therefore set aside the decision of the Upper Tribunal.

35. I now turn to the decision of the First-tier Tribunal. The grounds advanced on behalf of the Respondent in respect of the dismissal of his appeal by the First-tier Tribunal mirror those submissions which have been made by Mr Bajwa before this Tribunal on the basis that of the evidence provided that he had passed his examinations by 23rd February 2012 and therefore before the date of the application, and the policy guidance at paragraph 79 demonstrated that it having been uploaded to the website demonstrated that he had been notified of the award prior to the application. The decision of the First-tier Tribunal has been set out earlier in this determination. Whilst the First-tier Tribunal did not have the advantage of the determination in **Raju** and **Nasim and Others**, it is plain from reading those findings of fact, which were open to the judge to make on the evidence, correctly states the law as it now is. The judge was not satisfied that he had been awarded his qualification before the date of the application as the Postgraduate Awards and Progression Board had not met and did not do so until July 2012. He found, as this Tribunal, that the policy did not assist the Appellant as the college did not award the qualification until July 2012 when the Board met. For those reasons, I am satisfied that the First-tier Tribunal decision was right to dismiss the appeal under the Immigration Rules.

36. Similarly, the First-tier Tribunal dealt with human rights. Mr Bajwa has confirmed that the Respondent does not advance any Article 8 grounds therefore the findings made at paragraph 14 would remain and the appeal was rightly dismissed on human rights grounds. Where the First-tier Tribunal fell into error was that the Tribunal did not deal with the Section 47 removal. In those circumstances I re-make the decision dismissing the appeal under the Immigration Rules, on human rights grounds but allowing the appeal that the Section 47 removal that was made was not in accordance with the law.

Decision

The decision of the Upper Tribunal is set aside. The decision of the First-tier Tribunal is set aside and re-made as follows:-

The appeal is dismissed under the Immigration Rules and on human rights grounds but the appeal against the removal directions under Section 47 is allowed as it is not in accordance with the law.

Signed Date 3/3/2014

Upper Tribunal Judge Reeds