



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

Appeal Number: IA/21385/2012

THE IMMIGRATION ACTS

Heard at Field House

On 7th October 2014

Determination

Promulgated

On 23rd October 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR MUHAMMAD SAOUD

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not Present or Represented

For the Respondent: Mr M Shilliday (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant with regard to a determination of the First-tier Tribunal (Judge Devittie) promulgated on 6th December 2012 by which he dismissed the Appellant's appeal against the Secretary of State's decision to refuse him leave to remain as a Tier 1 (Post Study Work) Migrant.
2. The path by which this case came to the Upper Tribunal has been long. After the First-tier Tribunal dismissed the appeal the Appellant sought permission to appeal. That was refused by a Designated Judge of the First-

tier Tribunal on 21st December 2012. The Appellant then made a renewed application to the Upper Tribunal which was refused by Upper Tribunal Judge Latter on 9th January 2013.

3. The Appellant then sought Judicial Review of Upper Tribunal Judge Latter's decision. Permission was granted on 4th June 2013 and on 29th November 2013, there having been no request by either side for a substantive hearing; an order was made quashing the decision of Judge Latter.
4. The effect of the High Court Order is that the matter remained outstanding before the Upper Tribunal awaiting a decision on whether to grant permission to appeal. Permission was granted by the Vice President of the Upper Tribunal, CMG Ockelton on 16th July 2014.
5. Thus the matter came before me. My first task is to decide whether the First-tier Tribunal made an error of law and if so whether and to what extent the determination should be set aside.
6. There was no appearance by or on behalf of the Appellant. It is quite clear from the court file that the Appellant was served with Notice of Hearing at the address that he has provided to the Tribunal. Furthermore, his representatives were also served. When no-one attended I caused my clerk to contact the representatives who said that they were without instructions. On the basis that there was no explanation for the Appellant's absence nor any application for an adjournment I proceeded.
7. The case before the First-tier Tribunal was an appeal against the Secretary of State's decision, taken on 21st December 2012 to refuse the Appellant leave to remain as a Tier 1 (Post Study Work) Migrant under the PBS system. The Appellant had sought to rely on a degree awarded on 6th July 2012 by Anglia Ruskin University, after the date of his application but before the date of the Respondent's decision.
8. The grounds argue that the First-tier Tribunal gave no adequate consideration to a legitimate expectation that the Appellant would be able to submit evidence, at a later date, that he had been awarded his degree. He was unable to produce it with his application because it did not then exist as it had not then been awarded to him.
9. The grounds argued that there is nothing in section 85A of the Nationality, Immigration and Asylum Act 2002 which could logically lead to the conclusion that "at the time of making" an application must mean "at the date an application is first made" and that the policy on evidential flexibility should have been applied.
10. The arguments raised in the grounds have now been resolved against the Appellant in the case of Raju & Ors [2013] EWCA Civ 754. It is now clear that the required documents have to be submitted to the Secretary of State with the application. It is not good enough that they are submitted later. In this case the Appellant could not have submitted his degree

award because he had not been awarded it at the date of his application. The Appellant could not win his appeal under the Immigration Rules and thus the First-tier Tribunal did not make an error of law. The appeal to the Upper Tribunal is dismissed.

Signed

Date 20th October 2014

Upper Tribunal Judge Martin