



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

Appeal no: **IA 48402-13**

THE IMMIGRATION ACTS

At **Field House**
on **23.06.2014**

Decision signed:
26.06.2014
sent out: **16.07.2014**

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Sivasankar KARUPPANAN

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: no appearance
For the respondent: Mr Nigel Bramble

DETERMINATION AND REASONS

This is an appeal, by the respondent to the original appeal against the decision of the First-tier Tribunal (Judge Pathma Lingam), sitting at Taylor House on 18 March, to dismiss a tier 1 (post-study work migrant) appeal by a citizen of India, born 11 May 1983. The judge, who was not helped by the fact that neither side appeared before her, allowed the appeal on the basis of *Khatel*; but that decision had already been overruled in *Raju & others* [\[2013\] EWCA Civ 754](#).

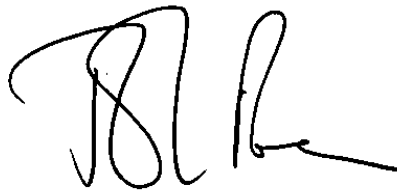
2. This appellant's post-study work migrant application, though dated 28 February 2012, was received by the Home Office on 4 April; no doubt he was trying to get in ahead of the abolition of the post-study work migrant route in the Rules which were to come into force on 6 April, since it had been announced some time before that, when the new Rules came into force, applications submitted by the 5th would be considered under the old

ones. The difficulty with this was that he had not yet been awarded the degree he needed for his application to succeed, which he was not given till 22 June.

3. This was permissible under *Khatel*, as there the Tribunal had held that, if the necessary evidence in a points-based application were supplied before the date of the decision, then it was admissible under s. 85A (4) of the [Nationality, Immigration and Asylum Act 2002](#), since the application was to be regarded as continuing till then. If that was the case, then someone in the appellant's position could succeed on the basis that his application had been "made within 12 months of obtaining the appropriate qualification" [see appendix A, table 10].
4. However, the Court of Appeal in *Raju & others* (one of whom was Mr Khatel) said quite clearly at paragraph 24 that

An application is made when paragraph 34G says it is made [*in other words, when posted, delivered in person or by courier, or submitted on line*] ... these applicants could not score [*the necessary*] points, because they had made their applications before they obtained their qualifications.
5. That was this appellant's situation, and so the judge should have dismissed his appeal. It is a pity she was left to decide the case on her own, though *Raju & others* had been out since 25 June 2013.

Home Office appeal allowed
First-tier decision reversed



(a judge of the Upper
Tribunal)