



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

Appeal Number: IA/49641/2013

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 26<sup>th</sup> August 2014**

**Determination  
Promulgated**

**On 3<sup>rd</sup> September 2014**

**Before**

**UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**KHURRAM SHAHZAD**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Hussein, Counsel, instructed by Sky Solicitors

For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is the Appellant's appeal against the decision of Judge Cohen made following a hearing at Hatton Cross on 28<sup>th</sup> May 2014.

**Background**

2. The Appellant is a citizen of Pakistan born on 18<sup>th</sup> April 1990. He first came to the UK on 29<sup>th</sup> January 2011 as a student with leave until 31<sup>st</sup> July

2014. On 24<sup>th</sup> May 2011 he was granted leave to remain as a Tier 4 (General) Student until 30<sup>th</sup> August 2013.

3. On 30<sup>th</sup> July 2012 he made a combined application for leave to remain in the UK as a Tier 1 (Entrepreneur) Migrant under the points-based system and for a biometric residence permit.
4. On 14<sup>th</sup> June 2013 the Secretary of State refused that application on the basis that she was not satisfied that he met the requirements of paragraph 41-SD of Appendix A of the Immigration Rules. No points were awarded in respect of the funds held in a regulated financial institution nor in respect of funds disposable in the UK.
5. The judge dismissed the appeal under the Immigration Rules.
6. The Appellant sought permission to appeal his decision which was granted by Judge McDade on 24<sup>th</sup> June 2014.

### **Findings and Conclusions**

7. The original judge appears to have overlooked the fact that he had no jurisdiction to consider this appeal.
8. The Appellant was not entitled to appeal against the decision of 14<sup>th</sup> June 2013 because he still had leave to remain in the UK. Accordingly the decision does not fall within Section 82(2)(e) of the Nationality, Immigration and Asylum Act 2002 which provides a right of appeal where variation of a person's leave to enter or remain in the UK if, when the variation takes effect, the person has no leave to enter or remain constitutes an appealable immigration decision.
9. Since the Appellant still had leave to remain until 30<sup>th</sup> August 2013 the decision under challenge of 14<sup>th</sup> June 2013 is not an appealable immigration decision.
10. Mr Hussein accepted that this was the position.

### **Decision**

11. The judge erred in law. His decision is set aside. The following decision is substituted. The appeal is dismissed for want of jurisdiction.

Signed

Date

Upper Tribunal Judge Taylor