IAC-AH-CJ-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/21468/2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 17th June 2013	**On 15th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR MUHAMMAD ZUBAIR KHAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No appearance
For the Respondent: Ms J Isherwood (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge D'Ambrosio promulgated on 28th December 2012, following a hearing at Glasgow on 11th December 2012. In the determination, the judge dismissed the appeal of Muhammad Zubair Khan. The Appellant applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, who was born on 12th December 1978. He appeals against the decision of the Respondent Secretary of State dated 24th September 2012, to refuse his application to remain in the UK as a Tier 1 (Post-Study Work) Migrant under the points-based system, and against the decision to remove him under Section 47 of the 2006 Act.

The Appellant's Claim

3. The Appellant's claim is that he has a UK recognised degree at masters level in business management. His certificate was awarded in April 2011. The Respondent was wrong to not award him all the points that he claimed (paragraph 22). His appeal should be allowed.

The Judge's Findings

4. The judge found that the Appellant does not rely on the bachelors or masters degree or PhD. He relies upon a postgraduate diploma, which he claims is "equivalent to a degree". The judge found that this was irrelevant. The Rules make it quite clear that his postgraduate diploma is not one of the qualifications for which he can claim 20 points (see paragraph 14). The judge also found that parliament was entitled to decide that for Tier 1 (Post-Study Work) Migrants points are awardable only for precisely those qualifications which parliament considers to be acceptable (paragraph 15). The appeal was dismissed.

Grounds of Application

5. The grounds of application state that the Respondent's decision to remove the Appellant from the country by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006, was wrong. This is because the Appellant made his application on 4th April 2012. This was then refused on 24th September 2012. Since then the Appellant has been living under Section 3C of the Immigration Act 1971 and then under Section 3D of the Immigration Act 1971. The Respondent's decision, on 24th September 2012, included a decision to remove the Appellant from the United Kingdom by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. No paragraph 395C removal factors were addressed when the variation decision was taken. Therefore, it was clear on a balance of probabilities that the Respondent's decision was not in accordance with the law. Reliance was placed upon **Ahmadi (s.47 decision: validity; Sapkota) [2012] UKUT 00147 (IAC)**.

6. On 13th March 2013, permission to appeal was granted on the basis of the case of **Ahmadi [2012] UKUT 00147**.

7. On 8th April 2013, a Rule 24 response was entered to the effect that the Respondent concedes that the Section 47 point is such as to amount to a material error in law. However, "for the avoidance of doubt the

Respondent does not consider that other matters raised in the application disclose a material error in law in respect of the immigration decision" (see paragraph 4).

The Hearing

8. At the hearing before me on 17th June 2013, there was no attendance by the Appellant or by a representative on his behalf. Nor, was any explanation given for this non-attendance. On the other hand, Ms J Isherwood, a Senior Home Office Presenting Officer, was in attendance, and she repeated the arguments in the Rule 24 response of 8th April 2013. The only Grounds of Appeal were in relation to Section 47. This, however, was conceded by the Respondent Secretary of State. There was no challenge to the substantive decision. The substantive decision dismissed the Appellant's appeal. Ms Isherwood asked me to allow the appeal with respect to Section 47.

Error of Law

9. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside that decision and remake the decision (see Section 12(2) of TCEA 2007). My reasons are as follows. Under **Ahmadi [2012] UKUT 00147**, it is clear that the Tribunal's decision with respect to Section 47 of the 2006 Act, which decision was made at the same time as a substantive decision by the Secretary of State, was wrong in law. The case of **Ahmadi [2012] UKUT 00147** establishes that two decisions must be made at separate times. This matter is conceded by the Respondent Secretary of State in the Rule 24 response of 8th April 2013. Accordingly, I allow the appeal with respect to the Section 47 decision. However, I dismiss the appeal, such as it is, against the substantive decision of the Tribunal. I remit this matter back to the Secretary of State to make a fresh Section 47 decision.

Decision

10. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original decision. I remake the decision as follows. This appeal is allowed with respect to Section 47 of the 2006 Act. This matter is remitted back to the Secretary of State for a fresh decision under Section 47 of the 2006 Act.

11. No anonymity order is made.

Signed Date

Deputy Upper Tribunal Judge Juss 17th July 2013