



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

Appeal Number IA/36846/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 11 September 2015**

**Decision & Reasons Promulgated
On 14 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR ROSHAN PRADHAN
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Ms E Savage, a Home Office Presenting Officer

For the Respondent: Mr A B AL Arayan, Farani, Javid, Taylor Solicitors

DETERMINATION AND REASONS

Introduction

1. In this appeal, the Secretary of State for the Home Department appeals against a decision of the First-tier Tribunal allowing the appeal of Mr Pradhan ('the claimant') who appealed against a decision taken on 5th September 2014 to refuse his application for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant pursuant to Paragraph 245ZX of the Immigration Rules HC 395 (as amended). The appeal of Mrs Pradhan (which was heard together with the claimant's appeal) is not subject to an appeal to this Tribunal.

Background Facts

2. The claimant is a citizen of Nepal born on 12th February 1984. As set out above he applied for leave to remain as a Tier 4 (general) student Migrant.

The Appeal

3. The claimant appealed to the First-tier Tribunal. In a determination promulgated on 19 January 2015, Judge Sweet remitted the application to the Home Office for a fresh decision to be made in light of the finding that the claimant ought to have been granted 60 days to find an alternative college in light of the suspension of the licence of Blake Hall College (the first college that the claimant had applied to in respect of the application in issue).

The Appeal to the Upper Tribunal

4. The Secretary of State sought permission to appeal to the Upper Tribunal. On 20 April 2015 First-tier Tribunal Judge Colyer granted permission to appeal. Thus, the appeal came before me.

Preliminary Issue

5. Ms Savage raised as a preliminary issue a concession on behalf of the Secretary of State for the Home Department. With regard to ground 1 of the Secretary of State's grounds of appeal it was conceded that, in light of the case of **QI (Pakistan) [2011] EWCA Civ 614**, the Secretary of State for the Home Department had incorrectly applied Paragraph 245ZX(I) of the Immigration Rules HC395 (as amended).
6. In light of that concession and effective withdrawal of that ground of appeal Mr Arayn accepted that the First-tier Tribunal judge's decision that the claimant was entitled to 60 days leave to find an alternative college was in error.

Material Error of Law

7. The First-tier Tribunal decision contains a material error of law. The application was remitted to the Home Office by the First-tier Tribunal for a fresh decision to be made on the basis that, in light of the suspension of the licence of Blake Hall College, the appellant should have been granted 60 days to find an alternative college. It was submitted in the grounds of appeal that as the appellant did not have a CAS for Blake Hall college when its licence was suspended he could not benefit from the matters of fairness falling within the remit of the case of **Patel (India) 2011 UKUT 2011**. Mr Arayn did not resist those grounds. The claimant was not entitled to be granted a 60 days to find an alternative college, therefore the First-tier Tribunal erred in law in making that finding.
8. The First-tier Tribunal decision is set aside

Re- making of the Decision

9. I re-make the decision. In light of the concession made by the Secretary of State the appeal by the claimant against the decision of the Secretary of

State is allowed to the extent that it was not in accordance with the Immigration Rules. Paragraph 245ZX (I) does not apply on the facts of this case. This was the sole reason for refusal of the claimant's application.

10. The First-tier Tribunal remitted the matter to the Home Office for a fresh decision and I was invited to do the same.

11. In the case of **Greenwood (Automatic Deportation: Order of Events) [2014] UKUT 00342 (IAC)** the Upper Tribunal considered the power of the First-tier Tribunal to 'remit' a matter to the respondent. At paragraph 16 the Upper Tribunal indicated as follows:

"16. As I indicated above, there is a third possible error in paragraph 23 of the Tribunal's decision. In the second sentence, the Tribunal says:

"Given the fundamental nature of the respondent's error, we remit the matter back to the respondent for the error to be remedied".

17. Ignoring the pleonasm of "remit back" I think it is in general doubtful whether the First-tier Tribunal has jurisdiction to remit a matter to a decision-maker. It has a power to allow or dismiss an appeal; and if allowing an appeal it has a power to give directions, with which the Secretary of State must comply. It does not formally have the power to quash the decision under appeal, but it is well understood that a decision of the Tribunal to the effect that the decision was not in accordance with the law prevents the decision-maker from relying on it or acting on it, so that it is to that extent of no effect. In those circumstances, if the decision is one which results from an application made by an individual, the position is that the application is outstanding, awaiting a lawful decision. No remittal is necessary. Any circumstances arising from the fact that an application has not yet been decided (for example under s.3C of the 1971 Act, or s.77 of the 2002 Act) will continue, and will be treated as not having been interrupted by the unlawful decision. If there is any doubt about the matter, the First-tier Tribunal, in allowing the appeal, can direct the decision-maker to treat the applicant accordingly."

12. I conclude that a direction is appropriate rather than remittal. The Secretary of State is directed to consider the claimant's application afresh in light of the concession made that Paragraph 245ZX(I) does not apply.

Decision

13. The decision of the First-tier Tribunal is set aside. The appeal by the claimant against the Secretary of State's decision is allowed to the extent that the decision was not in accordance with the Immigration Rules as Paragraph 245ZX(I) does not apply on the facts of this case.

14. The Secretary of State is directed to consider the claimant's application afresh in light of the concession that Paragraph 245ZX(I) does not apply.

Signed P M Ramshaw

Date 11 September 2015

Deputy Upper Tribunal Judge Ramshaw