



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

Appeal Number: IA/22179/2012

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29<sup>th</sup> May 2014**

**Determination  
Promulgated  
On 3<sup>rd</sup> June 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HARRIES**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**MR HAO XING  
(NO ANONYMITY DIRECTION)**

Respondent

Representation:

For the Appellant: Mr A Van As, of Visa Inn Immigration Specialist  
For the Respondent: Mr P Della, Home Office Presenting Officer

**DETERMINATION AND REASONS**

Details of the Parties and Proceedings

1. The appellant in the Upper Tribunal is the Secretary of State for the Home Department. The respondent, Mr Hao Xing, is referred to hereafter as the applicant. He was born on 5<sup>th</sup> January 1982 and is a citizen of China. He

appealed before First-tier Tribunal Judge N M K Lawrence (the Judge) against the decision of the Secretary of State, made on 26<sup>th</sup> September 2012, to refuse to vary his leave to remain in the United Kingdom as the dependant of a Tier 1 (Post-Study Work) Migrant. The Judge dismissed the appeal under the Immigration Rules in a determination promulgated on 3<sup>rd</sup> December 2012.

2. Permission to appeal against the Judge's decision to the Upper Tribunal was granted to the applicant by First-tier Tribunal Judge Pooler on 20<sup>th</sup> December 2012. The matter was then determined without a hearing by Deputy Upper Tribunal Judge M A Hall sitting at Sheldon Court, Birmingham, on 12<sup>th</sup> June 2013. He found that the Judge had made a material error of law in the making of his decision, set it aside and remade it by allowing the appeal under the Immigration Rules in accordance with the case of Khatel and others (s85A; effect of continuing application) [2013] UKUT 00044 (IAC).
3. On 2<sup>nd</sup> July 2013 the Secretary of State requested permission to appeal to the Court of Appeal against the decision of the Upper Tribunal in the light of the subsequently decided case of Raju and others v Secretary of State for the Home Department [2013] EWCA Civ 754 holding that Khatel had been wrongly decided. On 23<sup>rd</sup> July 2013 Upper Tribunal Judge Peter Lane gave directions to the parties of the proposed use of Rules 45(1)(b) and 46 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as follows in the light of the findings in Raju with a view to setting aside the Upper Tribunal determination and re-visiting the appeal against the determination of the First-tier Tribunal:

**Upper Tribunal's consideration of application for permission to appeal**

45. (1) On receiving an application for permission to appeal the Upper Tribunal may review the decision in accordance with rule 46 (review of a decision), but may only do so if—

- (a) when making the decision the Upper Tribunal overlooked a legislative provision or binding authority which could have had a material effect on the decision; or
- (b) since the Upper Tribunal's decision, a court has made a decision which is binding on the Upper Tribunal and which, had it been made before the Upper Tribunal's decision, could have had a material effect on the decision.

4. The Upper Tribunal decision accordingly came before me on 29<sup>th</sup> May 2014 under Rules 45 and 46 of the Tribunal Procedure (Upper Tribunal) Rules 2008 for review. For the purposes of this hearing Mr Van As had very helpfully set out the applicant's current position in a detailed letter dated 20<sup>th</sup> May 2014. For the purposes of this determination I need record only the most salient of the facts set out in that letter, namely that the applicant has made a fresh application to the Secretary of State for leave

to remain in the United Kingdom and Mr Della was in agreement that he is entitled to, and will be granted, such leave. In the circumstances Mr Della did not wish to pursue either an appeal or review of the Upper Tribunal's decision allowing the applicant's appeal under the Immigration Rules.

5. I was invited by both representatives to make a consent order under Rule 39 of the Tribunal Procedure (Upper Tribunal) Rules 2008 allowing the decision of the Upper Tribunal to stand. Rule 39(1) allows the Upper Tribunal, at the request of the parties, but only if it considers it appropriate, to make a consent order disposing of the proceedings and making such other appropriate provision as the parties have agreed.
6. I accordingly make a consent order in terms that the decision of Deputy Upper Tribunal Judge M A Hall allowing the applicant's appeal under the Immigration Rules is reviewed by way of taking no action so that the decision stands. Under Rule 45(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008 if the Upper Tribunal decides not to review the decision, or reviews the decision and decides to take no action in relation to the decision, the Upper Tribunal must consider whether to give permission to appeal in relation to the decision or that part of it. In the circumstances of the agreement between the parties to this course of action it is considered appropriate not to give permission to appeal the decision.

#### Summary of Decisions

7. Under Rule 39(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 a consent order is made in terms that the decision of Deputy Upper Tribunal Judge M A Hall allowing the applicant's appeal under the Immigration Rules is reviewed by way of taking no action so that the decision stands.

Signed:

J M Harries

Deputy Upper Tribunal Judge  
Date: 3<sup>rd</sup> June 2014