



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

Appeal Number: IA/44554/2013

THE IMMIGRATION ACTS

Heard at Field House

On 10th June 2014

Determination

Promulgated

On 27th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

MR KUM BAHADUR RAI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Uppal, Solicitor

For the Respondent: Ms A Holmes, Home Office Presenting Officer

DETERMINATION AND REASONS
EX TEMPORE JUDGMENT

1. The Appellant appeals with permission a decision of the First-tier Tribunal promulgated on 18th February 2014, in which the Appellant's appeal against the refusal of his Tier 4 (General) Student Migrant application is dismissed.

2. Permission has been granted on the basis of the finding of the judge that the Appellant had submitted an application in time. The finding is not challenged.
3. The Respondent's representative indicated that she could not resist the inevitable consequence, following the case of **Basnet**, that such a finding requires the Respondent to have assessed the evidence submitted with the application as being evidence submitted within the timeframe required by the Rules, and the apparent failure to do so rendered the Respondent's decision "not in accordance with the law. The judge was bound to allow the appeal to that limited extent and the failure to do so is a material error of law such that the decision must be set aside and remade in those terms, leaving the Appellant awaiting a lawful decision in respect of an in time application.
4. The Appellant has made an application for a fees award and bearing in mind the reasons that I have allowed the appeal I direct that an amount equivalent to any appeal fees paid should be paid to the Appellant by the respondent within 28 days of the date of promulgation of this decision.

Signed

Date 25.06.2014

Deputy Upper Tribunal Judge Davidge