



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

THE IMMIGRATION ACTS

**Heard at Field House
On 9 August 2013**

**Determination Promulgated
On 13 August 2013**

Before

UPPER TRIBUNAL JUDGE WARR

Between

SECRETARY OF STATE

and

SHAZAD KHOWAJA

Appellant

Respondent

Representation:

For the Appellant: Not represented
For the Respondent: Ms H Horsley

DETERMINATION AND REASONS

1. This is the appeal of the Secretary of State but I will refer to the original appellant, a citizen of Pakistan born on 11 May, 1985, as the appellant herein.
2. The appellant was granted leave to enter on 8 September, 2010 as a Tier 4 (General) student until 31 October, 2011. He was granted leave to remain in the same capacity

on 23 December, 2011 until 22 March 2012. He applied for further leave to remain on 21 March, 2012 as a Tier 1 (Post-study work) (General) Migrant.

3. However this application was refused by the Secretary of State on 21 December, 2012 as the qualification relied on by the appellant was dated 6 July, 2012. The award was required at the date of the application: the respondent relied on the case of *NO (Post-Study Work- award needed by date of application) Nigeria* [2009] UKAIT 00054.
4. The Secretary of State also decided to remove the appellant under section 47 of the Immigration, Asylum and Nationality Act 2006.
5. The appellant appealed against the decision and his appeal came before a First-tier Judge on 25 April, 2013 when the appellant was represented by counsel.
6. The judge applied *Khatel and others (Nepal)* [2013] UKUT 44 (IAC) and allowed the appeal finding that the respondent's decision was not in accordance with the law and the appellant awaited a lawful decision. The judge also allowed the appeal against the removal directions.
7. The respondent appealed against the decision of the judge in relation to the application for leave to remain under the immigration rules noting that the judge was not entitled to take into account evidence submitted after the application. There was no challenge to the judge's decision to allow the appeal in respect of the removal directions.
8. Permission to appeal was granted by the First-Tier Tribunal on 2 July, 2013 noting that the decision of the tribunal in *Khatel* had been reversed by the Court of Appeal in *Raju, Khatel and others v Secretary of State* [2013] EWCA Civ 754.
9. On 6 August, 2013 the appellant's representatives wrote to the tribunal requesting the matter to be determined on the papers.
10. Ms Horsley said she wished to withdraw the decision under section 47 and applied for permission to do so.
11. It was clear that the appellant's degree postdated the application. The degree had been awarded on 13 July, 2012. The decision of the Court of Appeal applied.
12. I was invited to find that the decision of the judge was flawed by a material error of law and to remake the decision. The judge had not dealt with article 8. However the appellant had only been in the United Kingdom since 8 December, 2010 and Ms Horsley relied on *MM (Zimbabwe)* [2009] UKAIT 00037: a student in the United Kingdom on a temporary basis had no expectation of a right to remain in order to further ties and relationships if the criteria of the points based system were not met.
13. It is clear that the basis of the judge's decision has been overtaken by the Court of Appeal decision in *Raju*.
14. There has been no respondent's notice or any suggestion that the appeal should be allowed on other grounds. Nevertheless I have considered article 8. It may be that

the appellant has built up some private life in the period of time that he has resided in the United Kingdom as a student. Whether Article 8 is engaged in those circumstances is a moot point particularly given the fact that I have been provided with no evidence of any particular ties that the appellant might have formed during this period. I adopt the approach of the Tribunal in the case of *MM* as set out in paragraphs 48ff. It appears that the Secretary of State's decision under the immigration rules was lawful and in pursuit of a legitimate aim. In relation to proportionality the appellant has been in the United Kingdom on a temporary basis as a student and had no expectation of remaining in the UK unless he was able to comply with the immigration rules. I have been given scant if any material to indicate that removal of the appellant in the particular circumstances of this case would be other than just and proportionate.

15. For the reasons I have given I find that the decision of the First-tier Judge was materially flawed in law. I remake the decision.
16. I note the decision of the respondent to issue removal directions has been withdrawn.

The appeal under the immigration rules is dismissed.
The appeal is dismissed under Article 8

Note re Fee Award:

The appeal before the judge was allowed in part in respect of s 47, a decision which has now been withdrawn, and I do not find it appropriate to disturb the order made by the First-tier Judge in the particular circumstances of the case.

Signed

Upper Tribunal Judge Warr
9 August 2013