



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

Appeal Number: IA 02043 2013

THE IMMIGRATION ACTS

**Heard at Field House
On 2 December 2013**

**Determination Promulgated
On 9 December 2013**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MONIR KHAN

Respondent

Representation:

For the Appellant: Mr L Tarlow, Senior Home Office Presenting Officer

For the Respondent: Mr A Wattoo, Solicitor of Sky Solicitors

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, who I will call the claimant, against the decision of the Secretary of State refusing him further leave to remain as a Tier 1 (Post-Study Work) Migrant under the points-based system.
2. The claimant has been in the United Kingdom, with permission, since 2009. Nothing discreditable has been alleged against him in the course of these proceedings. His leave could not be extended under the Rules because he did not have his degree certificate at the required time. His application was made on 20 March 2012 but the degree was not awarded until 30 May 2012, which was more than twelve months after his last leave had been granted. This failure to meet the requirements of the rules is in no way the claimant's fault; it is a result of the

administrative procedures of the University of Wales which in this respect at least is by no means unusual.

3. The application was not finally refused until 31 December and the First-tier Tribunal, understandably, given the then state of the law, allowed the appeal with reference to the decision in Khatel and Others (s85A; effect of continuing application) [2013] UKUT 00044 IAC. We now know that Khatel was wrongly decided because the Court of Appeal had made that extremely clear in the case of Secretary of State for the Home Department v Raju & Ors [2013] EWCA Civ 754. It follows that the reason for the First-tier Tribunal allowing the appeal, namely that an application continuance until it is determined, is just wrong, and I have to set aside the decision of the First-tier Tribunal.
4. I then have to ask myself how I should progress the case further. Mr Wattoo for the claimant says that many people in circumstances similar to the claimants have had their leave extended but he produced no evidence to substantiate that. I am not suggesting he is making up his claim which no doubt reflected his instructions and his experience but there was no evidence about it and certainly nothing which enables me to analyse the circumstances in which people have been given leave to see if any pattern emerges which would make it unlawful not to treat the claimant in a similar way. That is not a conclusion that I can reach properly on the information is not before me.
5. If the appeal is to be salvaged for the claimant then it must be on human rights grounds. These were clearly pleaded at an early stage and Mr Wattoo seeks to rely on them today. It is an interference with the private and family life of the claimant to require him to leave the United Kingdom. Immigration Rules exist, to interfere with people's private and family lives but very often decisions under the immigration rules comply with the United Kingdom's obligation under the European Convention on Human Right because they are lawful and proportionate to a proper purpose. Mr Wattoo does not suggest the claim engages any of the stronger weighty matters that can sometimes make a difference in Article 8 claims. For example, the claimant has not married somebody in the United Kingdom or father children there. In some ways of course that is very much to his personal credit. He came to the United Kingdom to study and that is what he has done. Be that as it may, there are no weighty factors on which the claimant can rely. Rather he has developed the ordinary kind of social life that a student might be expected to generate during a quite long stay in the United Kingdom. This is not something that counts for very much in a balancing exercise.
6. The Rules are perfectly plain and I have to ask myself if this is a case where, exceptionally, the ordinary requirements of the Rules should not apply, and I can see no reason why I should reach such a conclusion. Things have been said about fairness and legitimate expectation but the only legitimate expectation is a decision in accordance with the Rules at the time the application is made, which is what the claimant got. Clearly he hoped he would be allowed to stay longer but the Rules have changed and he cannot satisfy them.
7. I take no pleasure whatsoever in reaching this decision. I can understand from the claimant's personal point of view that he must feel rather hard done by. I stress there is no evidence he has done anything wrong but his circumstances do

not meet the requirements of the Rules. There is nothing before me which makes it a disproportionate decision to exclude him now.

8. I set the decision of the First-tier Tribunal and I substitute a decision dismissing the claimant's appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 5 December 2013