



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/00998/2013

**THE IMMIGRATION ACTS**

Determined Orally at Field House  
On 10 September 2013

Determination Promulgated  
On 23 September 2013  
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Before

UPPER TRIBUNAL JUDGE COKER

Between

ANIL KUMAR BARAJU

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr T Ahmed, Counsel instructed by Universal Solicitors  
For the Respondent: Ms Z Kiss, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. Mr Baraju was successful before the First-tier Tribunal in his appeal against a decision by the Secretary of State to refuse to vary his leave from a student to Tier 1 (Post-Study Work) Migrant. He was successful on two bases. First of all that he met the criteria under the Immigration Rules in the light of the case of **Khatel** [2013]

**UKUT 0044 (IAC)** and secondly, in the alternative, that the Secretary of State had not had regard to her own flexibility policy such that the decision was not in accordance with the law. Mr Baraju was unsuccessful in his appeal to the First-tier Tribunal on human rights grounds. The Secretary of State had at the hearing before the First-tier Tribunal withdrawn her decision to remove the appellant in accordance with Section 47.

2. The Secretary of State was granted permission to appeal, in essence on the basis that **Khatel** had been overturned by the Court of Appeal. There is no dispute that **Khatel** has been overturned and it was agreed by the parties before me that the decision of the First-tier Tribunal to allow the appeal as not being in accordance with the Immigration Rules was an error and I therefore set aside the First-tier Tribunal determination insofar as allowing the appeal under the Immigration Rules is concerned. I re-make that decision and dismiss the appeal under the Immigration Rules.
3. There was no challenge by Mr Baraju to the First-tier Tribunal's decision to dismiss the appeal on human rights grounds and that decision of the First-tier Tribunal therefore stands. There was no challenge by the Secretary of State to the First-tier Tribunal decision that the decision was not in accordance with the law because of the failure by the Secretary of State to apply her flexibility policy. That decision therefore stands.
4. Ms Kiss, very valiantly, tried to persuade me to allow her to amend her grounds of appeal arguing that the application by Mr Baraju was premature as per **Raju & Others [2013] EWCA Civ 754**. I took the view that it was not a premature application. He was able to make that application which he made just over a month before his leave as a student ran out. The fact that it was refused was not because it was premature but because he did not meet the criteria under the Rules. I therefore did not grant permission to the Secretary of State to amend her grounds but, even if I had, I would not have allowed the appeal on that basis.

In summary the First-tier Tribunal decision that the appeal is allowed under the Immigration Rules is set aside and in remaking dismissed; the decision that the decision of the Respondent was not in accordance with the law stands.

Signed on 20<sup>th</sup> September 2013

Upper Tribunal Judge Coker