



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

Appeal Number: IA/30727/2013

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
on 11<sup>th</sup> April 2014**

**Determination  
Promulgated  
On 11<sup>th</sup> April 2014**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**BILAL NAZAR MALIK**

Respondent

**Representation:**

For the Appellant: Mr Smart – Senior Home Office Presenting Officer.  
For the Respondent: No appearance.

**DETERMINATION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge Colyer promulgated on 10<sup>th</sup> December 2013 following his considering the merits of the appeal on the papers. Judge Colyer dismissed the appeal in respect of the Tier 4 (General) Student Migrant element of the case but allowed the appeal in respect of the Secretary of State's decision to remove Mr Malik from the United Kingdom pursuant to a removal direction issued under section 47 of the Immigration, Asylum and Nationality Act 2006.
2. In relation to this element the Judge refers to written submissions containing case law relevant to section 47 and refers to a recent practice of Home Office Presenting Officers to withdraw section 47 directions at the hearing. The appeal was determined on the papers

and in paragraph 12 Judge Colyer states "I follow the case law on this particular point and find that part of the decision is not in accordance with the law and on that point only I allow the appeal".

3. The Secretary of State challenges that element of the decision. There is no cross-appeal by Mr Malik in relation to the dismissal of his claim under the Immigration Rules.

## **Discussion**

4. Judge Colyer noted the existence of case law relating to section 47 and the previous practice of some Presenting Officer to withdraw such decisions at hearings. Cases such as Ahmadi (s. 47 decision: validity; Sapkota) [2012] UKUT 00147 (IAC) and Adamally and Jaferi (section 47 removal decisions: Tribunal Procedures) [2012] UKUT 00414 (IAC) have found that the statutory provisions prevented the Secretary of State issuing a removal direction at the same time as a decision on an application to vary leave to appeal with the effect that any decision made contemporaneously was 'not in accordance with the law'.
5. The Secretary of State unsuccessfully challenged the Tribunal decisions before the Court of Appeal in relation to this element whilst at the same time laying before Parliament an amendment to section 47 which resolved the issue. Section 51 of the Crime and Courts Act 2013 substituted a new sections 47 (1) and (1A) into the Nationality and Immigration Act 2006 from 8 May 2013 - see Crime and Courts Act 2013 (Commencement no 1) Order (SI 2013/1042). The amendment to s.47 is not retrospective but from 8<sup>th</sup> May 2013 removal decisions made under s.47 will be lawful even it made before the applicant has notice of the variation decision. This means that notice of the two decisions can be given in the same document.
6. The Commencement Order contains no transitional provisions relating to decisions made on applications filed prior to that date and has immediate effect in relation to all section 47 directions made on or after 8<sup>th</sup> May 2013. The decision under appeal is dated the 3<sup>rd</sup> July 2013 which is after this date. Accordingly the removal direction made under section 47 was lawful.
7. I find the Judge erred in law in allowing the appeal in relation to the section 47 removal direction based upon a material misdirection/misunderstanding of the law. I set the determination aside. The finding in relation to the inability of Mr Malik to satisfy the Tier 4 (General) Student requirements of the Immigration Rules shall stand. I substitute a decision to dismiss the appeal.

## **Decision**

8. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remake the decision as follows. This appeal is dismissed.**

Anonymity.

9. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order as there is no application of anonymity and the making of such an order is not justified on the facts.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 11<sup>th</sup> April 2014