



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/48013/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 1 September 2014

Determination Promulgated  
On 8 September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

ABU SADEK MD SADIQUR RAHMAN  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr S Acherjee of Clapham Law Solicitors  
For the Respondent: Mr C Avery Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this

Appellant. Having considered all the circumstances and evidence I do not deem it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Powell promulgated on 24 April 2014 which dismissed the Appellant's appeal on all grounds .

### Background

3. The Appellant was born on 29 November 1978 and is a citizen of Pakistan. On 24 July 2013 the Appellant applied for leave to remain in the United Kingdom as a Tier 4 (general) Student Migrant under the Points Based System.
4. On 30 October 2013 the Secretary of State refused the Appellant's application. The basis of the refusal was in essence that the Appellant was required to show that he had £9000 maintenance for the 28 day period 25 June 2013 to 22 July 2013 a figure based on the view that he did not have an 'established presence' in the UK.

### The Judge's Decision

5. The Appellant appealed on a number of grounds but in essence argued that as he had an 'established presence' in the United Kingdom he was only required to show that he had £2000 for the relevant period; he also argued that the decision breached his rights under Article 8 of ECHR.
6. The Appellant appealed to the First-tier Tribunal and First-tier Tribunal Judge Powell (hereinafter called "the Judge") dealt with the case on the papers. He dismissed the appeal against the Respondent's decision. The Judge found that the Appellant did not have the £9000 funds that the Respondent asserted he required for the relevant period; he found that there was no evidence that the decision did not engage Article 8.
7. Grounds of appeal were lodged and on 9 July 2014 Upper Tribunal Judge Chalkley gave permission to appeal.
8. At the hearing Mr Avery on behalf of the Respondent conceded that there was a material error of law in the determination in that the Appellant met the definition of 'established presence' as set out in paragraph 14(ii) of Appendix C given his previous period of leave of leave as a Tier 4 student. He accepted that the

Appellant was applying for continued study on a single course and he had completed 6 months of the course. He conceded that on the basis that the Appellant had an established presence the maintenance figure he had to show for the required period was £2000 and he had that sum in his account for that period.

### **Finding on Material Error**

9. Having heard those submissions I reached the conclusion that the Tribunal made a material error of law such that the Judge's determination cannot stand and must be set aside in its entirety.

10. I remade the decision.

11. I was satisfied that given the concessions properly made by Mr Avery on the basis of the documents provided to the Respondent the Appellant had to show he had the sum of £2000 for the required period and he had done so. He should therefore have been awarded the 10 points claimed for maintenance.

### **Decision**

**12. There was an error on a point of law in the decision of the First-tier Tribunal such that the decision is set aside**

**13. I remake the decision by allowing the appeal.**

**14. There was no application for anonymity in this case and I see no reason to make such a direction.**

Signed

Date 6.9.2014

Deputy Upper Tribunal Judge Birrell

### **Fee Award**

As I have remade the appeal and allowed it and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable as the application should have been granted on the basis of the documents submitted to the Respondent .