



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

Appeal Number: IA/43117/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 10 September 2015**

**Decision & Reasons Promulgated
On 11 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

v

Mr Raj KUMAR

Respondent

Representation:

For the Appellant: Ms K Pal, Senior Home Office Presenting Officer

For the Respondent: Mr V Makol, counsel instructed by Maalik & Co solicitors

DECISION & REASONS

1. The Respondent is a national of India, born on 20 June 1983. He first arrived in the United Kingdom on 29 July 2011 with leave to enter as a dependent on his wife, Kuljit Saini, who had previously been granted Tier 4 general leave as a student. Mrs Saini then applied for and was granted further leave to remain as a Tier 1 (Post Study Work) Migrant visa valid to 28 August 2014 and the Respondent was granted leave in line as her dependant. Mrs Saini then applied for and was granted a further Tier 4 (General) student visa valid until 26 December 2016, however, the Respondent's application for leave as her dependant was refused in a decision dated 29 October 2014.

2. The Respondent appealed and his appeal came before Judge of the First

Tier Tribunal Clapham for consideration on the papers on 5 March 2015. In a decision promulgated on 19 March 2015 the Judge allowed the appeal to the extent of remitting it back to the Secretary of State for the Home Department to reconsider on the basis that she had erroneously concluded that the Respondent's most recent leave was as a Tier 1 HS post-study dependent partner when his most recent leave was as a Tier 1 PSW dependent.

3. The Secretary of State for the Home Department sought permission to appeal, in-time, on the basis that as a dependant partner the Respondent was unable to switch between categories and reference was made to paragraph 319C(h) of the Immigration Rules. Permission to appeal was granted by Judge of the First Tier Tribunal Chambers on 15 May 2015 on the basis that the Judge appears to have misconstrued the immigration history and nature of the application being appealed against and should have decided the issue raised and should not have remitted.

4. Before me, Mr Makol conceded that First Tier Tribunal Judge Clapham had erred materially in law and submitted that the appeal should be remitted back to the First Tier Tribunal for a fresh hearing *de novo*. Ms Pal agreed with this proposed course of action. The parties accepted that paragraph 319(c)(h) of the Rules was not applicable but rather the relevant sub-paragraph was 319(c)(i)(i) and (ii) which makes provisions for the dependants of Tier 4 migrants. Ms Pal also submitted that Mrs Saini's college, Westminster Academy, was not a recognised body and so was not on the list of approved suppliers and it was likely that the Presenting Office would raise this issue at the remitted appeal.

5. In light of Mr Makol's concession and the agreement between the parties that the appeal should be remitted, I find that the First Tier Tribunal Judge made a material error of law and the appeal should be remitted for a *de novo* hearing at York House. No interpreter will be required and the time estimate is 1 hour.

Deputy Upper Tribunal Judge Chapman

10 September 2015