



**UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER**

**THE IMMIGRATION ACTS**

**Heard at Field House, London**

**On 5<sup>th</sup> June 2013**

**Determination**

**Promulgated**

**On 13<sup>th</sup> June 2013**

**Before**

**UPPER TRIBUNAL JUDGE ROBERTS**

**Between**

**MR RANA MUHAMMAD HISHAM YASIR**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Khan, Counsel

For the Respondent: Mr Avery, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Henderson made following a consideration of the evidence on the papers.

2. The Appellant had appealed a decision by the Respondent made on 8<sup>th</sup> March 2013 refusing him leave to remain in the UK as a Tier 4 (General Student) Migrant under the Points Based System. There was also a paragraph 322(3) with reference to paragraph 245W(C)(iv) issue.
3. In a determination promulgated on 12<sup>th</sup> April 2013 the Judge dismissed the appeal under paragraph 245ZX(c) of the Immigration Rules but allowed it under paragraph 322(3).
4. Both the Appellant and the Respondent sought permission to appeal. The Appellant challenged the Judge's findings on the basis that the Judge erred in her finding that the Appellant had not achieved the required English language qualification. The Respondent challenged the Judge's findings in respect of paragraphs 245ZW(c)(iv) and 322(3) on the basis that the Judge had failed to give adequate reasons for allowing the appeal under those provisions.
5. I am satisfied that after hearing submissions from both representatives and a copy letter dated 23<sup>rd</sup> January 2013 being submitted, that the determination of the First-tier Tribunal Judge discloses an error of law on this basis. It was accepted by Mr Avery that the Judge had been mistaken to conclude as she did in paragraph 15 of her determination that Communicator Level B2 is below that of Level B1. In fact the reverse is true. I am satisfied therefore that this error on the part of the Judge is a material one and one which taints the whole of her determination.
6. Equally apart from that at paragraph 16 of the determination, the reasons given for allowing the appeal under paragraph 322(3) are inadequate. They amount to one sentence.
7. The case was originally dealt with on the papers. The Appellant will attend he told me, a resumed oral hearing.

### Decision

8. The decision of the First-tier Tribunal discloses an error on a point of law such that it is set aside and will be remade.
9. Both parties accepted that the determination of the First-tier Tribunal Judge must be set aside and a fresh hearing take place. The matter will therefore be remitted to the First-tier Tribunal for a fresh hearing to take place and for full findings of fact to be made. It will be set down for an oral hearing as the Appellant intends to attend.

Directions

10. This appeal will be heard at Taylor House on 29<sup>th</sup> August 2013 so that the decision can be remade by a Judge other than Judge Henderson, under 7.2 of the Senior President's Practice Statements dated 25<sup>th</sup> September 2012.
11. Any time estimates and further directions at the discretion of the RJ at Taylor House.

**Signed:**

**Date:**