



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

Appeal Number: IA/03957/2013

THE IMMIGRATION ACTS

Heard at Field House

On 13th June 2013

Determination

Promulgated

On 25th June 2013

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

UDAYA SHAKYA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr Nath, HOPO

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Stott made on the papers at Birmingham on 5th April 2013.

2. The Appellant is a citizen of Nepal, born on 18th October 1985. He came to the UK in January 2007 with a student visa which was subsequently extended until 1st August 2010. On 3rd August 2010 he was granted leave to remain in the UK as a Tier 1 (Post-Study Work) Migrant until 3rd August 2012.
3. On 1st August 2012 the Appellant made a combined application for further leave to remain in the UK as a Tier 2 (General) Migrant and for a biometric residence permit. He was refused on 25th January 2013 because he had not provided a valid certificate of sponsorship reference number assigned by a Tier 2 licensed Sponsor and the Respondent had no record to show that he had been assigned a certificate of sponsorship at the time of the application.
4. The judge recorded that it was apparent from the material that the Appellant submitted an initial application which had been refused on 1st October 2012 due to certification problems in respect of documentation submitted by the Sponsor. There then followed an email exchange which led to another application being resubmitted on 29th January 2013, four days after the refusal which was the subject of the appeal before the judge.
5. Mr Shakya explained to me that his Sponsor had applied for a licence on 18th July 2012 but had been confused over the requirements. The Sponsor made a second application, which was rejected on 18th February 2013, and on the same day made a third application. The licence was eventually granted on 19th March 2013.
6. The Appellant forwarded the copy of the letter providing the valid sponsorship licence and certificate of sponsorship on 20th March 2013 to the Tribunal but it did not reach the file.
7. When the judge dismissed the appeal the Appellant sought permission to challenge his decision which was granted by Judge Lewis on 2nd May 2013. Judge Lewis stated that had the judge been able to consider the Appellant's letter of 20th March a different conclusion might have been reached.
8. However, unfortunately for the Appellant that is not the case. He cannot benefit from the decision in Khatel and Others (Section 85A effect of continuing application) [2013] UKUT 00044 which held that an application for further leave to remain is to be treated as a continuing application, starting with the date when it was first submitted and ending on the date when it is decided.
9. The certificate of sponsorship in this case was only issued after the Respondent made her decision. At the date of decision the Appellant was not in a position to show that he could meet the requirements of Appendix A (attributes) and the application was properly refused under paragraph

245HD of the Immigration Rules. The proper course for this Appellant is a fresh application.

Decision

10. The original judge did not err in law and his decision stands. The Appellant's appeal is dismissed.

Signed

Date

Upper Tribunal Judge Taylor