



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/07493/2013

THE IMMIGRATION ACTS

Heard at Field House
On 12 February 2014

Determination Promulgated
On 4 March 2014

Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

MR AROSH USHMANTHA TELGE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Bhuiyan
For the Respondent: Mr G Jack

DETERMINATION AND REASONS

1. The appellant is a national of Sri Lanka. On 11 December 2009 he was granted leave to enter the United Kingdom as a Tier 4 (General) Student until 11 May 2011. He then made an application on 10 May 2011 for leave to remain as a Tier 4 (General) Student Migrant under the points-based system. What then appears to have happened, according to the appellant's witness statement, is that "on the day of the

hearing, the Secretary of State had withdrawn the decision in order to make a fresh decision which was taking so long that I, on 29 September 2012, made a fresh application with all relevant documents". I note that 29 September 2012 is the date shown on the application form appearing in the respondent's bundle. Somewhat confusingly in the refusal letter reference is made to the application of 10 May 2011 rather than the application of 29 September 2012. For all practical purposes this appears to make little difference to the matters in issue in this appeal.

2. The application was refused on 20 February 2013 and a decision was made at the same time to remove the appellant from the UK by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.
3. The appellant appealed. In a determination promulgated on 21 October 2013 the appeal was dismissed. The First-tier Tribunal Judge found that the appellant had to demonstrate access to £2,000 for a consecutive 28 day period. In support of his application the appellant submitted evidence of funds in the "**Sanasa Business Development Bank Ltd**" (hereafter "**SBDB Ltd**") in Sri Lanka. However, the respondent did not accept this evidence because the bank is not regulated by the Central Bank of Sri Lanka and as a consequence did not find that the appellant had access to £2,000 for the specified period. The respondent did, however, accept that the appellant had paid his course fees of £2,500 for the first year of his course which was another requirement of the PBS under "Maintenance (Funds)".
4. In his witness statement which was before the First-tier Tribunal Judge the appellant asserted that at the time of the application the respondent did not issue a list of financial institutions which were acceptable to her. The appellant further asserted that the respondent did not inform him of any changes to requirements and therefore the respondent ought not to rely on the grounds upon which the appellant's application has been refused.
5. The second limb of the appellant's case was that **SBDB Ltd** may not be regulated by the Central Bank of Sri Lanka but it is regulated under statutory provisions. He submitted a list of those financial institutions regulated under that scheme. Therefore the funds available in **SBDB Ltd** should have been taken into account and the appeal allowed.
6. The judge was unpersuaded by this argument. Although the appellant produced a pamphlet showing institutions authorised to accept deposits from the public which included **Sanasa Development Bank Limited** (hereafter "**SDB Ltd**") this was not the same name as the bank referred to in the application form which at D1 of the respondent's bundle is referred to as **SBDB Ltd** and at D2, **SBDB** (not ltd).
7. The judge went on to state that the respondent contacted **SDB Ltd** and was told that it does not have an office at 744 Kandy Road, Thorana Junction, Kelaniya and it is not the same bank as **SBDB Ltd**.
8. As a result of this the judge went on to find that the appellant has not demonstrated that the bank in which he holds funds is regulated by the Central Bank of Sri Lanka

for the purpose of the Immigration Rules and although the appellant claims that the bank is regulated under a statutory scheme the bank does not appear on that list. Although a bank bearing a similar name to that bank does appear it has been contacted by the respondent to learn that they are not the same. On balance therefore he found that the appellant has not discharged the burden of proof.

9. The judge then considered the “new” Article 8 Rules and found that the appellant does not meet those and the appellant does not appear to rely on Article 8 of the Human Rights Convention either. He therefore dismissed the appeal on all grounds.

The Error of Law Finding

10. The first thing to note is that the judge did not deal with the Section 47 removal direction. It is common ground that that was not a lawful decision having been made in the decision letter prior to 8 May 2013. Mr Jack sought permission to withdraw that decision and there being no objection to this course of action I allowed him to do so.
11. It is clear from Appendix P that an applicant will not satisfy the requirements of the rules if he provides documents from a financial institution which is on a list of those that “do not satisfactorily verify financial statements”. Appendix P also contains a list of financial institutions “whose financial statements are accepted”. What of those institutions that are not on the list of those that do not satisfactorily verify financial statements or those that do not appear on the list of those whose financial statements are accepted? That situation appears to be covered at paragraph 6 of Appendix P where the following is stated:-

“6. The UK Border Agency will continue to verify financial information from other institutions on a case-by-case basis, and may refuse applications on the basis of these individual checks.”
12. That was the relevant part of the Appendix that applied to the appellant at date of application (either on 10 May 2011 or 29 September 2012) and at the respondent’s decision on 20 February 2013. It is reasonable to assume that the overseas document verification report that is in the file was part of the checking of the financial information “from other institutions” referred to at paragraph 6 of Appendix P. The problem with that report is that the “contact history” referred to was made to the operations manager at SDB Ltd and not SBDB Ltd which is where the appellant maintains that he has a fixed deposit. It is hardly surprising therefore that the operations manager of SDB Ltd confirmed that SDB Ltd did not have a branch at the address mentioned in the letters confirming the deposit. It is easy to understand that the operations manager stated that he had been receiving verification requests from other missions regarding SBDB Ltd because the names of the banks are so similar.
13. The judge hearing this matter in the First-tier Tribunal made errors of law firstly because he did not deal with the Section 47 point but also because he appears to have taken against the appellant in part by reason of enquiries made of a bank which was not the bank in which the appellant ever claimed he has deposited funds. It is hardly

surprising therefore that the bank branch address given by the bank of which enquiries were made was not the same as the address in which the appellant claims to have funds. There is a further point that it is not necessarily fatal to the appellant's claim that the bank in which he has funds does not appear on the list of financial institutions whose financial statements are accepted considering that list only came into existence on 6 April 2013 i.e. post decision.

14. The judge erred in the ways described and those errors are material because it could not be said that despite the errors the outcome of the appeal would inevitably be the same. I therefore set aside the decision and announced that I was doing so at the hearing.

The Resumed Hearing

15. Both representatives told me that they were prepared to continue with the resumed hearing of the appeal straightaway. Mr Bhuiyan did not wish to call the appellant to give evidence. In his submissions Mr Bhuiyan said that the verification report cannot be applicable to this appeal because that was not the bank where the appellant has his funds. As at the date of decision there was no requirement for the bank in which the appellant does have the funds to be regulated by the Central Bank of Sri Lanka. Following the rejection of the appellant's application a letter was written by SBDB Ltd to the Visa Officer clearly confirming that it is exempted from the requirement of registering with the Central Bank of Sri Lanka because it is registered under the Co-operative Act No. 5 of 1972. This proved that the bank is a proper bank and the appellant held the funds at the relevant time and therefore came within the requirements of the Immigration Rules.

My Findings

16. It does not appear to be in issue that the amount of Rs 2,000,000 equates to an amount of approximately £9,500 which is clearly a far greater sum than the £2,000 earlier referred to. The central issue is whether the appellant had the relevant amount of at least £2000 at the date of application as per paragraph 1A of Appendix C of the Rules and had at least that amount for the relevant 28 day period.
17. The evidence that was before the Secretary of State prior to date of decision is at D1 of the refusal bundle and is a letter on headed notepaper with logo from SBDB Ltd confirming that the appellant has a fixed deposit with that bank for the period of 02/07/2012 to 02/07/2013. An investment number is also given. In addition at D2 of the refusal bundle there are fixed deposit details from the same bank (there is no reference to "limited" and the significance or otherwise of that has not been explained to me) confirming the same thing. Conditions attached to the letter show that the deposit is fixed for the period stated on the face of the receipt and the bank reserves the right to refuse "pre-maturity withdrawals" but may consider such withdrawals at its sole discretion. Additionally the deposit could be withdrawn on seven days notice subject to the bank's decision to accept such notice only up to the date of maturity of the deposit.

18. It is a moot point as to whether the appellant could be said to be "in possession of £2000 for a consecutive 28 day period" when his ability to obtain funds is restricted in the way described. However, that was not a point that was taken in the refusal letter by the respondent which refused the application because the issuing authority was not regulated by the Central Bank of Sri Lanka.
19. It is also the case that the Policy Guidance for Tier 4 applications made on or after 4 September 2012 at paragraph 156 states as follows: --

"The evidence of money held must be of cash funds in the bank (this includes savings accounts and current accounts *even when notice must be given*) – (my italics), as a loan letter or financial or government sponsorship available to the applicant. Other accounts or financial instruments such as shares, bonds, overdrafts, credit cards and pension funds are not acceptable, regardless of the notice period."
20. I was not addressed in any detail on the matter by the representatives but although the money is said to be on fixed deposit there is capacity for it to be withdrawn on notice and that does not appear to offend the wording in the Policy Guidance.
21. I find on balance that SBDB Ltd exists and that the appellant was in possession of the requisite funds for the relevant period. There is the letter accompanying the application and also a separate letter confirming the balance of funds well in excess of the £2000 required. There is also a letter written very shortly post decision by SBDB Ltd complaining of the treatment that it has received from UK Border Agency. These letters could be forgeries but there is no serious suggestion that they are.
22. I take particular note of 1A (i) of Appendix C which states that no points will be awarded where specified documents show that the funds are held in a financial institution listed in Appendix P as being an institution in which the UK Border Agency is unable to make satisfactory verification checks (inserted as from 20 July 2012). However, the bank in which the appellant has his funds is not included in any such list. The check that was made was made to the wrong bank so it is not clear if or how UK Border Agency was unable to make a satisfactory verification check.
23. I note that the comments that appear on the verification report state that SBDB Ltd is not regulated by the Central Bank of Sri Lanka and therefore according to PBS Rules the funds maintained at that bank cannot be taken into account as available funds.
24. As to that point I refer to the pamphlet that has been produced by the Central Bank of Sri Lanka dated May 2006 which sets out those institutions which are authorised to accept deposits from the public in that country. It states that licensed commercial banks, licensed specialised banks and registered finance companies have been given authority by the Central Bank of Sri Lanka to "mobilise" deposits from the public under the existing laws. It then proceeds "However, co-operative societies registered under the Co-operative Societies Law No. 5 of 1972 and building societies incorporated under the National Housing Act have been exempted from the

requirement to obtain a licence from or to register with the Central Bank for the purpose of taking deposits".

25. The Tier 4 Policy Guidance at paragraph 181 sets out what documents can be used to show money available to the Tier 4 (General) student. At paragraph 181 iv "a letter from a financial institution regulated by either the Financial Services Authority or, in the case of overseas accounts, the home regulator (official regulatory body for the country the institution is in and where the money is held) confirming funds have been held for a consecutive 28 day period ending no more than one month before the date of the application.
26. That Policy Guidance is not part of the Immigration Rules, or at least it had not been incorporated into them at the date of application and does not therefore have the force of the Immigration Rules themselves.
27. It was not until 6 April 2013 that financial institutions whose financial statements are accepted either as licensed commercial banks or licensed specialised banks was inserted at Table 13 in Appendix P. It appears therefore that the practice to be followed in the case of other financial institutions is set out in paragraph 11 of this determination namely that "The UK Border Agency will continue to verify financial information from other institutions on a case-by-case basis, and may refuse applications on the basis of these individual checks."

Conclusions

28. On the balance of probabilities I am satisfied that the appellant meets the requirements of the Immigration Rules. It does not appear to be an issue that the appellant has more than sufficient funds in a fixed deposit account at the relevant time which is likely to be able to be taken out upon notice being given. The bank in which he has the money does not appear in the list of financial institutions that do not satisfactorily verify financial statements or indeed in the list of those whose financial statements are accepted. The respondent attempted to verify financial information from the institution in which the appellant had his money but contacted the wrong bank.
29. Although it is the case that certain banks in Sri Lanka have been given authority by the Central Bank of Sri Lanka to "mobilise" deposits certain co-operative societies are exempted from the requirement to obtain a licence from or to register with the Central Bank for the purpose of taking deposits. However, it was not until after date of decision that there was a requirement for SBDB Ltd to be regulated by the Central Bank and even then a question that I do not need to answer is whether a bank registered under the Co-operative Societies Law No. 5 of 1972 can be said not to be regulated in the manner required by the rules.
30. Viewed in the round the appellant has shown that he has access to £2000 for the specified period required under the rules and thus this appeal succeeds.

Decision

31. The First-tier Tribunal Judge erred for the reasons set out above and his decision is set aside.
32. Also for the reasons set out above the appeal is allowed under the Immigration Rules.
33. No application for an anonymity direction was made to me and the circumstances do not appear to warrant such a direction being made. I therefore do not make one.

Signed

Date

Upper Tribunal Judge Pinkerton