



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/07606/2014

THE IMMIGRATION ACTS

Heard at Field House
On 31st July 2014

Determination Promulgated
On 11th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

SAJITH MURUGUN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No legal representation
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction and Background

1. The Appellant appeals against a determination of Judge of the First-tier Tribunal Kelly promulgated on 13th May 2014.

2. The Appellant is a male citizen of India, born 4th February 1988 who applied for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant under the points-based system.
3. The application was refused on 20th January 2014 with reference to paragraph 245ZX(d) and paragraph 1A(c) of Appendix C of the Immigration Rules.
4. The Respondent did not accept that the Appellant was entitled to be awarded the 10 points he had claimed in relation to maintenance. The Appellant was required to show that he was in possession of £1,600 for a consecutive 28 day period. The closing date of the entries in the Appellant's bankbook that he had submitted in support of his application was 5th December 2013. The Respondent contended that he therefore needed to show evidence of £1,600 being available for 28 days from 8th November 2013 to 5th December 2013.
5. The Respondent pointed out that the Appellant's bankbook showed that he had been in possession of no more than 60,914.89 rupees (£598) between 8th November and 18th November 2013 and therefore he had not demonstrated that he held the level of funds required for the 28 day period.
6. The Appellant appealed to the First-tier Tribunal, requesting that his appeal be determined on the papers.
7. The appeal was considered by Judge Kelly (the judge) who found that the Respondent had been correct to refuse the application under the Immigration Rules. The judge noted that the Appellant had provided bank statements with his Notice of Appeal, but was satisfied that these statements had not been submitted with the application, and therefore the judge was unable to take them into account. The appeal was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal contending that he had provided evidence that he held sufficient funds to satisfy the maintenance requirements of the Immigration Rules.
8. Permission to appeal was granted by Designated Judge Macdonald in the following terms;
 - "1. The Appellant is a citizen of India whose appeal was dismissed by First-tier Tribunal Judge Kelly in a determination promulgated on 13th May 2014.
 2. The grounds of application contend that the judge failed to note the additional page in the bankbook which disclosed that he was in possession of sufficient funds to satisfy the rules, the judge having found that the statement was not included with the original application.
 3. The question would appear to be whether the statement referred to by the Appellant was lodged with the application and absent legal representation the position is not as clear as it might be. However I infer that the Appellant is saying that he did indeed lodge the book with the application which did show that he had sufficient funds – if that is so it is arguable that the judge erred in law in his decision.
 4. Permission to appeal is granted on this basis. It will be up to the Appellant to satisfy the Upper Tribunal that he did lodge the bankbook with the application."

9. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008, contending that the judge had directed himself appropriately and the determination did not disclose an error of law.
10. Directions were subsequently issued making provision for there to be a hearing before the Upper Tribunal to decide whether the First-tier Tribunal should be set aside.

The Upper Tribunal Hearing

11. The Appellant attended the hearing. I satisfied myself that there was no need for an interpreter and proceedings could be conducted in English.
12. The Appellant indicated that he was content to proceed without legal representation. I explained to the Appellant the procedure that would be adopted throughout the hearing. I established that he had seen the grant of permission to appeal, and the Respondent's rule 24 notice.
13. The Appellant asked me to find that the judge had erred, in that the Appellant did not have the necessary funds required in relation to maintenance. There was no copy of the Appellant's application form on file, and Mr Melvin did not have a copy. The Appellant confirmed that he had submitted his application online, but in relation to maintenance he had submitted his State Bank of India savings passbook which was on file. The Appellant stated that he had submitted his application on 30th December 2013 and therefore took the view that the 28 day period operated between 2nd December 2013 and 30th December 2013 and he had submitted bank statements with his appeal to cover that period.
14. Mr Melvin submitted that the judge had not erred and that the 28 day period was between 8th November 2013, and 5th December 2013, which was the last date of an entry in the Appellant's savings book.

My Conclusions and Reasons

15. The judge did not err in law. The judge referred to Appendix A of the Immigration Rules in paragraph 2 of the determination and he should have referred to Appendix C, but this is not a material error.
16. The Appellant has confirmed that the evidence of maintenance that he submitted with his application was his State Bank of India savings book. The last entry in that book is 5th December 2013 as correctly pointed out by the Respondent. Therefore the Appellant in accordance with paragraph 1A(h) of Appendix C needed to show that he had the required funds for a 28 day period and the end date of this period was the closing balance in the savings book that he had submitted with his application. The correct period for assessment of maintenance was therefore 8th November to 5th December 2013 and the judge was correct so to find. The judge correctly found that in that period, the Appellant did not have at least £1,600 in his account. The

judge was also correct to find that he could not take into account documents submitted after the application as section 85A(4) of the Nationality, Immigration and Asylum Act 2002 confirms that the Tribunal may consider evidence adduced by the Appellant, in a points-based application, only if that evidence was submitted in support of and at the time of making the application. There are some exceptions to this provision, but those exceptions did not apply in this case.

Decision

The determination of the First-tier Tribunal does not disclose an error of law.

I do not set aside the decision. The appeal is dismissed.

Anonymity

No order for anonymity was made by the First-tier Tribunal. There has been no request for anonymity and the Upper Tribunal makes no anonymity direction.

Signed

Date 1st August 2014

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date 1st August 2014

Deputy Upper Tribunal Judge M A Hall