



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal no: IA 13943-13

THE IMMIGRATION ACTS

At **Field House**
on **21.03.2014**

Decision signed: **22.03.2014**
sent out: **26.03.2014**

Before:

Upper Tribunal Judge
John FREEMAN

Between:

ARVINDER PAL

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: *Darryl Balroop* (counsel instructed by Ropemakers, East Ham)

For the respondent: Mr Chris Avery

DETERMINATION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Susan Clarke), sitting at Taylor House on 23 October 2013, to dismiss a tier 4 (general) student appeal by a citizen of India, born 17 August 1982. The only point at issue was funding, on which the appellant had to show, by bank statements sent in with his application on 17 August 2012, a balance not falling below £1,600 for the last 28 days.

2. Unfortunately the statements sent in then did show a small shortfall, at some point during the period covered, from 1 June to 16 July. A further set was sent in later, on the basis of which it was argued before the judge that the balance in the appellant's account had remained at over £2,000 from 20 July to 20 August 2012. The difficulty with that submission, as the judge pointed out, was that no 20 August balance could have been shown by any documents, either submitted or accidentally left out of a submission made on the 17th.

3. That mattered, since this was a points-based [PBS] case, to which s. 85A, as now enacted, of the Nationality, Immigration and Asylum Act 2002 applied, together with exception 2 to that section and consequently this sub-section:
 - (4) Where Exception 2 applies the Tribunal may consider evidence adduced by the appellant only if it—
 - (a) was submitted in support of, and at the time of making, the application to which the immigration decision related,
4. While there was and is, at that time under the former evidential flexibility policy, and now under paragraph 245AA of the Rules, in favour of a document mistakenly left out of a series submitted, that could not be applied so as to create a new base date for the application, and rely on a different series, starting and finishing later.
5. There is an issue between the appellant and the Home Office about what exactly he did send in with his later submission; however even if his evidence about that was right, then for the reasons given above, it cannot allow him to succeed under the points-based system. A submission by Mr Balroop that his application should be treated as continuing up to the date of the decision, in line with previous authorities, cannot succeed in the light of *Raju & others* [2013] EWCA Civ 754

Appeal dismissed

A handwritten signature in black ink, appearing to be 'JLR', written in a cursive style.

(a judge of the Upper Tribunal)