



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

Appeal Number: IA/23475/2013

THE IMMIGRATION ACTS

Heard at Field House

On 23 April 2014

Determination

Promulgated

On 19 May 2014

Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

**MR MOINUL ALAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person - not represented

For the Respondent: Mr P Nath

DETERMINATION AND REASONS

1. The appellant is a Bangladeshi citizen who was born on 21 August 1982. On 19 October 2012 he applied for further leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant. That application was

refused by a decision dated 24 May 2013 which decision the appellant appealed to the First-tier Tribunal.

2. In a determination promulgated on 28 February 2014 the First-tier Tribunal Judge dismissed the appeal. The appellant sought permission to appeal to the Upper Tribunal and this was granted. In granting permission the judge doing so said that the respondent did not serve a bundle and it is arguable that in those circumstances the appellant provided all the relevant documents with his application (to the Secretary of State) as there is nothing to say that he did not.
3. I have before me the respondent's refusal letter but not a copy of the application to the Secretary of State. The reason for refusal is that the appellant claimed 10 points under maintenance (funds) but was awarded none because he did not supply financial documents to show that he held the required funds for a minimum of 28 days prior to his application as required by 245ZX(d) of the Immigration Rules. The appellant was sent a letter on 3 May 2013 requesting him to provide bank statements showing that he had the required funds for a minimum of 28 days. The appellant failed to respond and provide those documents and therefore the Secretary of State was not satisfied that he met the general grounds for leave to remain under paragraph 322(9) which sets out the grounds on which leave to remain and variation of leave to enter or remain should normally be refused.
4. Prior to the hearing before the First-tier Tribunal Judge the appellant made a witness statement dated 5 February 2014 which is referred to as a statement of truth. He states there that on 3 May 2013 he received a letter from UKBA dated 3 March 2013 asking him to provide bank statements covering the period from September 2012 to October 2012 which, UKBA said, had not been received with the original application and documents sent in October 2012. A copy of that letter has been produced. There is also a copy of a "track and trace" document showing that the letter was indeed sent on 3 May 2013 from the respondent to the appellant. It appears therefore that either the letter dated 3 March 2013 was incorrectly dated or for some reason it was not sent for two months thereafter.
5. Contained within that letter is the request to send "original" documents (the word original is capitalised) as photocopies are not acceptable for the purpose of deciding the application.
6. In the appellant's statement he said that he was asked to provide the information within seven days and as the letter was dated 3 March the date for responding had already passed. Furthermore he submitted his original bank statements with the application dated 19 October 2012. Later in the statement he refers to attaching a copy of the bank statement as he was unable to provide the original which was submitted with his application. He makes a further point in that statement that he had previously extended his leave to remain.

7. I am perfectly satisfied that the judge made an error in paragraph 10 of the determination where he refers to the appellant presenting a copy of a Post Office “track and trace” document to confirm that he had sent a letter to the respondent on 3 May 2013. It is clear enough on the face of the documentation that it was the respondent that sent a letter to the appellant on that date. That error it is not of itself necessarily material.
8. It was accepted by the judge, and indeed it is not in issue, that the appellant did not reply to the letter dated 3 March 2013 and the point was made to the judge that the appellant had been in the UK since 2007 and would have known of the procedures to be followed under the Immigration Rules. The Presenting Officer at the hearing suggested that the bank statements which the appellant had presented were not in sterling and in any event did not cover the relevant period and therefore the requirements of the Immigration Rules had not been met.
9. It is then recorded that the appellant reiterated that he had submitted additional documents when he had been requested to do so. It is unclear from that recording whether the appellant was saying that he had submitted documents following the letter of 3 March 2013. That is certainly not something that he maintained was the case either in his statement, grounds seeking permission to appeal or before me and may have been a misunderstanding and a misrecording by the judge. It is apparent, however, from the last sentence of paragraph 13 of the decision that the judge appears to make his decision based on the fact that the appellant accepted that he failed to produce the required evidence with his application form. The judge wrongly accepted that the appellant responded to the respondent’s letter. He came to that conclusion because the appellant produced a “track and trace” document confirming this. As previously stated it was not the appellant who produced the “track and trace” document but the respondent.
10. The judge then went on to state that the bank statement which the appellant sent to the respondent shows an opening balance of 0.00 and a closing balance on 13 September 2012 of 1,310,140.00. A further document from UCB shows that the closing balance in the same account on 17 October 2012 was 13,10,140.00. It was not clear to the judge if that sum was the same sum shown as the closing balance in the bank account but I do not understand why that should be so. Although the comma appears in a different place the amount is exactly the same and it must surely be a reasonable inference that the amount remained in the account for the intervening period. Although it is true, as the judge points out, that the balances shown in the two documents are not in sterling I would find it difficult to understand indeed if for lack of the conversion rate being shown refusal would be justified. It is but a moment’s work to ascertain conversion rates using the Internet.
11. I am somewhat puzzled by the judge’s comments in paragraph 15 that “.....in this case the respondent (after some delay) wrote to the appellant and provided him with an opportunity of producing further documents.

Although the appellant did provide some additional documents it appears that the respondent did not take account of them". It seems likely that this comment was made because the judge had not understood that the documents were not provided when requested in May 2013. The judge then went on to say that although he had some sympathy with the appellant he could not be satisfied that he had shown that he had the necessary funds for the required 28 day period.

12. Cumulatively and for the reasons set out above I find that the decision of the judge is not a safe one. He has misunderstood some of the evidence as described and that has led to unsafe findings. His decision is therefore set aside.

The Rehearing

13. The appellant and Mr Nath, on behalf of the respondent, both addressed me. Mr Nath made the very pertinent point that the letter sent in May 2013 requested documentation which the appellant did not provide when he had the opportunity to do so. He simply did nothing about it and unsurprisingly the application was then refused.
14. The appellant made the point that in the knowledge that the respondent does not accept photocopies and he had sent the bank statements with his application he did not see what more he could do. I put it to him that he could have telephoned UKBA to see if the problem could be resolved to which he replied "I am sorry I could not do anything".

My Findings

15. I found the appellant to be a witness who gave his evidence in a straightforward manner. He has been broadly consistent as to what took place. In particular he has always maintained that he provided all that was required of him when he made his application, that there was delay by the respondent of many months before he was ultimately requested to provide documents that he says he had already sent, and that by the time he had received the wrongly dated or delayed letter the period for him allowed by the respondent to provide that documentation had already passed.
16. I find it somewhat perplexing that having eventually received the letter requesting further evidence the appellant did not contact UKBA to explain his difficulties. He has to prove that he has satisfied the Immigration Rules on the balance of probabilities. In coming to my decision I bear in mind that he had already renewed his application for leave to remain on a previous occasion and had satisfied the authorities that he had sufficient funding then. More importantly, however, is that he clearly understood the Rules when he made that application and indeed provided then all that was required of him. He must therefore have been entirely cognisant of what was required of him when he made the application in October 2012. The application form itself, a copy of which is not on the file but Mr Nath

showed to me, refers to the inclusion of two statements from his bank so that certainly the appellant intended at the time of application to send them. The only question is whether or not he did so. The copy statements that he provided to me and to the First-tier Tribunal Judge were both generated on 17 October 2012 which is just prior to the date of application. That is good evidence that the statements were in existence and available to be examined with the application at the date of it. I see no reason to find that they were issued after the event and backdated. Those statements reveal that the appellant had sufficient funds to meet the maintenance requirements of the Rules at the relevant time and for the relevant period.

17. There is no doubt that the appellant did not respond to the request to provide original bank statements but of course his point is that he could not do so because the Secretary of State already had the originals before her. Although the appellant has not proved beyond reasonable doubt that he has complied with the requirements of the Immigration Rules that is not the standard of proof required of him.
18. Having heard from the appellant and on a thorough review of the file I am satisfied on balance that he did supply evidence of sufficient funding with his application such that he meets the maintenance requirements under the Rules. In the circumstances it would not be appropriate for there to be a refusal under paragraph 322(9) of the Rules since the documentation he was required to produce was already in the possession of the Secretary of State.

Decision

19. For the above reasons the determination of the First-tier Tribunal Judge is set aside and this appeal is allowed under the Immigration Rules.
20. No anonymity direction has previously been made and in the current circumstances I see no need for one to be made now.

Signed

Date

Upper Tribunal Judge Pinkerton