



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/39360/2013

THE IMMIGRATION ACTS

Heard at Bradford
On 24 April 2014

Determination Promulgated
On 28 May 2014

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ANWAR SHER

Respondent

Representation:

For the Appellant: Mr Steward, Senior Home Office Presenting Officer
For the Respondent: Ms Aspinall, instructed by Abbott Solicitors

DETERMINATION AND REASONS

1. The respondent, Anwar Sher, was born on 18 April 1979 and is a male citizen of Pakistan. I shall hereafter refer to the respondent as “the appellant” and to the Secretary of State as the “respondent” (as they were before the First-tier Tribunal).

2. The appellant had entered the United Kingdom in 2005 as a student and was subsequently granted further periods of leave to remain until 28 January 2013. Thereafter, he made an application for further leave to remain as a Tier 1 (Entrepreneur) Migrant. That application was refused by the respondent by a decision dated 18 September 2013. The appellant appealed to the First-tier Tribunal (Judge J D L Edwards) which, in a determination promulgated on 27 January 2014, has allowed the appeal to the limited extent that the matter was remitted to the respondent for reconsideration "in the light of the material now submitted by the appellant." The Secretary of State sought permission to appeal which was granted by Judge Pirota on 12 February 2014.
3. The appellant's application fell to be considered under paragraph 245DD of HC 395 (as amended). The appellant was awarded 0 points for Appendix A: Attributes ("applicant has access to funds as required"). The appellant had provided a letter from the National Bank of Pakistan. The respondent considered that this was

not acceptable because it does not explicitly confirm the institution is regulated by the appropriate regulatory body and it does not include any third party contact information regarding Mr Ullah [third party]. The full address and postcode, landline telephone number and any email address as specified under paragraph 41-SD of the Immigration Rules.

Further, the letter from a Mr Khan [the appellant's legal representative] was not acceptable "because it does not confirm the validity of your signature on the third party declaration."

4. Further, the respondent considered that the appellant had not provided "any evidence in relation to marketing or advertising material." The contract provided by the appellant was unacceptable because the client (BS Computers Ltd) had been dissolved in 2010 and "therefore the contract is not valid as the client no longer exists. Furthermore, you have failed to provide a landline telephone number for your clients." The notice of refusal recorded that "the decision has been made not to request additional documentation or exceptionally consider the application under the provisions of paragraph 245AA as it is not anticipated that addressing the omission or error would lead to a grant of leave."
5. The appellant was awarded 0 points for "funds held in regulated financial institutions." The letter reiterates the problems with the bank letter. Likewise, the appellant was awarded 0 points "for funds disposable in the United Kingdom". Again, it was stated that the appellant had not been awarded points "under provision (d) in the first row of Table 4 of Appendix A ... for having access to £50,000." The appellant was awarded the full requirement of 10 points for "English language" and "maintenance (funds)".
6. At the hearing before the First-tier Tribunal, the Presenting Officer had submitted that "the evidence before [the Tribunal] did not establish the required standard that the funds claimed by the appellants were genuinely available to him." Counsel for the appellant on that occasion drew the Tribunal's attention to the fact that the

appellant had received a letter dated 15 March 2013 from the UK Border Agency. This letter notified the appellant that, as from 31 January 2013, amendments had been made to the Immigration Rules regarding entrepreneur migrants. The letter recorded that the government had made the following changes:

- (1) the introduction of a genuine entrepreneur test; and
- (2) a new requirement for applicants to hold the necessary minimum funds or invest them in the business) on an ongoing basis rather than solely at the time of the application.

7. The letter goes on to tell the appellant that “the UK Border Agency will contact you in the coming weeks to advise you how these changes will affect your application and what steps (if any) you will need to take before we make a decision on your application.”
8. It is agreed that no further letter was sent by UK Border Agency to the appellant. Judge Edwards had been persuaded by the argument that, as a consequence of not sending a further letter, the respondent had acted unfairly and not in accordance with the law. At [24] the judge stated:

It is unfortunate that the respondent did not contact the appellant as was promised in the letter of 15 March 2013, with a view to obtaining any further material required to meet the amended Rules. To that extent, the respondent has acted unfairly and, therefore, not in accordance with the law. Thus to the extent that this case must be remitted to the respondent for reconsideration, the appeal must be allowed.

9. The grounds of appeal submit that the letter of 15 March 2013 did not “impose an obligation upon the Secretary of State to give the applicant the opportunity to rectify any defect or inadequacy in the application or the supporting documentation.” The grounds note “the new Rules” referred to in the letter “do not alter the appellant’s application”.
10. I find that the judge erred in law by allowing the appeal and remitting the matter to the Secretary of State. I acknowledge that the appellant may have been left puzzled by the failure of the Home Office to write to him again but it will have become clear to the appellant, when his application was refused, that the changes in the Rules which are detailed in the letter of 15 March 2013 had no impact at all upon the outcome of his application. As I have recorded above, the supporting documentation supplied by the appellant with his application to the respondent simply did not comply with the requirements of the Immigration Rules. The UK Border Agency letter refers only to contacting the appellant again to advise “how *these* changes [my emphasis] might affect the application; the fact is those changes (see [6] above) did not affect the application in any way. Judge Edwards has, in effect, remitted the matter to the Secretary of State to carry out an entirely pointless exercise, i.e. reconsidering the appellant’s application (which was bound to fail in any event) in the light of the changes to the Rules.
11. Ms Aspinall, for the appellant, sought to widen the argument whilst seeking to rely upon the evidential flexibility policy in force at the time of the appellant’s

application. Both Ms Aspinall and Mr Steward, for the respondent, agreed that the application was covered by that policy which appears as Appendix B in the determination of the Upper Tribunal in *Rodrigues (Flexibility Policy)* [2013] UKUT 00042 (IAC). Ms Aspinall submitted that, whilst the documents submitted by the appellant might be deficient for the reasons stated in the refusal notice (see above), the information which was absent appeared in other documents submitted by the appellant with his application. This, she submitted, should have alerted the Secretary of State to apply the flexibility policy and to, in effect, put together or collate the various items of documentary evidence to enable the appellant to satisfy the Rule accordingly. In her skeleton argument, she submits also that the “defects identified in the refusal letter are minor and relate to details which could easily have been rectified should the appellant have applied its evidential flexibility policy.”

12. I reject those submissions. If the Rules require specific information on a single document, the requirements are not satisfied by an applicant providing the information spread across several different documents. I find that there was no obligation upon the Secretary of State to collate information from several documents. Further, the fact that the required information appeared on several documents did not necessarily indicate that there existed a single document which contained all the necessary information. Indeed, had there been such a document one would have expected the appellant to have produced it. There was nothing to alert the Secretary of State, therefore, to enquire about such a missing document under the flexibility policy. Further, there is nothing in the flexibility policy to indicate that the Secretary of State should overlook minor failures on the part of the applicant to comply with the Rules.
13. The appellant also seeks to rely upon *Naved (Student – fairness – notice of points)* [2012] UKUT 14 (IAC). The headnote reads as follows:

Fairness requires the Secretary of State to give an applicant an opportunity to address grounds for refusal, which he did not know and could not have known, failing which the resulting decision may be set aside on appeal as contrary to the law (without contravening the provisions of Section 85A of the Nationality, Asylum and Immigration Act 2002)

14. There was no suggestion in the present appeal that the reasons given by the Secretary of State for refusing the appellant’s application were not known or could not have been known by the appellant. The appellant had, put simply, produced supporting evidence which he knew or should have known failed to comply with the Immigration Rules in force at the time he made his application.
15. In the circumstances, I find the First-tier determination should be set aside. I have remade the decision. The appeal in respect of the Immigration Rules is dismissed. The grounds of appeal to the First-tier Tribunal [5] raise Article 8 ECHR but do no more than assert that the appellant had “developed a private life in the UK.” No further evidence in relation to Article 8 has been adduced. I am satisfied that the immigration decision in this instance represents the legitimate aim of the Secretary of State in maintaining a system of immigration control and that there is no evidence

whatever to show that the immigration decision will cause disproportionate interference to the appellant's private life.

DECISION

16. The determination of the First-tier Tribunal promulgated on 27 January 2014 is set aside. I have remade the decision. The appeal in respect of the Immigration Rules is dismissed. The appeal is dismissed on human rights grounds (Article 8 ECHR).

Signed

Date 22 May 2014

Upper Tribunal Judge Clive Lane