



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

Appeal Number: IA/49644/2013

THE IMMIGRATION ACTS

Heard at Manchester

On 27th August 2014

Determination

Promulgated

On 29th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR OWAIS AHMAD
(NO ANONYMITY DIRECTION MADE)**

Claimant

Representation:

For the Appellant: The appellant attended in person

For the Respondent: Mr Harrison , Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Mr Owais Ahmad date of birth 19th of July 1982, is a citizen of Pakistan.
2. I have considered whether any of the parties to the present proceedings requires the protection of an anonymity direction. Taking account all of

the circumstances I do not consider it necessary to make an anonymity direction.

3. This is an appeal by the Secretary of State for the Home Department. To avoid confusion I have used the term claimant to identify the appellant in the original hearing.
4. This is an appeal by the Secretary of State against the determination of First-tier Tribunal Judge Law promulgated on 19th March 2014. By the determination the judge allowed the appeal against the decisions of the Secretary of State dated 12th November 2013 to refuse to grant the claimant further leave to remain in the United Kingdom and thereupon to remove the claimant from the United Kingdom to Pakistan. The claimant was seeking to remain in the United Kingdom as a Tier 1 (General) Migrant under the Points Based System [PBS].
5. As this is an application under the PBS, the provisions of section 85A as amended of the 2002 Act apply. Those provisions specifically prescribe that evidence has to be submitted with the application and only evidence submitted at the time of making the application can be considered. The relevant provisions of section 85A are: --

Section 85A Matters to be considered: new evidence: exceptions

- 1) Those sections sets out the exceptions mentioned in section 85 (5).
- 2)
- 3) Exception 2 applies to an appeal under section 82 (one) if –
 - a) the appeal is against an immigration decision of the kind as specified in section 82 (2) (a) or (d),
 - b) the immigration decision concerned in application of the kind identified in immigration rules as requiring to be considered under a ' Points Based System ' , and
 - c) the appeal relies wholly or partly on grounds specified in section 84 (1)(a), (e) or (f).
- 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,
 - b) relates to the appeal in so far as it relies on grounds other than those specified in subsection (3) (c),
 - c) is adduced to prove that the document is genuine or valid, or

d) is adduced in connection with the Secretary of States reliance on a discretion under immigration rules, or in compliance with the requirement of immigration rules, to refuse an application on grounds not related to the acquisition of ' points ' under the Points Based System

6. Thus in respect of an application under the PBS the evidence relied upon by the claimant has to be submitted at the time of making the application.
7. As identified in the refusal letter of 13 November 2013 under the PBS the claimant was required to score 80 points under Appendix A (Attributes). Under appendix A the appellant scored 55 points according to the letter of refusal.
8. Under two headings/categories identified within the refusal letter the claimant had for Previous Earnings scored no points and for UK Experience scored no points. The explanation for that is clearly given the refusal letter. The documentation submitted by the appellant did not meet the requirements of the rules.
9. The requirements of the rules:-

245CA. Requirements for leave to remain

To qualify for leave to remain as a Tier 1 (General) Migrant, an applicant must meet the requirements listed below. If the applicant meets these requirements, leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

(a) The applicant must not fall for refusal under the general grounds for refusal, and must not be an illegal entrant.

(b) if the applicant has, or has had, leave as a Highly Skilled Migrant, as a Writer, Composer or Artist, Self-Employed Lawyer, or as a Tier 1 (General) Migrant under the Rules in place before 19 July 2010, and has not been granted leave in any categories other than these under the Rules in place since 19 July 2010, the applicant must have 75 points under paragraphs 7 to 34 of Appendix A.

(c) in all cases other than those referred to in (b) above, the applicant must have 80 points under paragraphs 7 to 34 of Appendix A.

(d) The applicant must have 10 points under paragraphs 1 to 15 of Appendix B.

(e) The applicant must have 10 points under paragraphs 1 to 3 of appendix C.

(f) The applicant must have, or have last been granted, entry clearance, leave to enter or remain:

(i) as a Tier 1 (General) Migrant,

(ii) as a Highly Skilled Migrant,

(iii) as a Writer, Composer or Artist, or

(iv) as a self-employed lawyer.

(g) The applicant must not be in the UK in breach of immigration laws except that any period of overstaying for a period of 28 days or less will be disregarded.

10. Appendix A paragraphs 7-35 are relevant specifically paragraphs 21 SD 3(b)(ii) where original payslips have to be produced and paragraph 24 and 25 with reference to paragraph 19SD where specified documents have to be produced including dividend vouchers and personal bank statements showing the amount of money paid to the recipient from a company.
11. With regard to previous earnings no personal bank statements have been provided by the claimant as required by the rules. No personal bank statements had been provided which demonstrated the net dividend payments being credited into the appellant's account. Whilst business bank statements had been submitted, those were not an acceptable secondary form of evidence as they did not show the net dividend payments leaving the business bank account. The required evidence to show that the claimant was in receipt of net dividend payments from SEO On line Ltd had not been submitted.
12. Payslips had been submitted to confirm the earnings from CCA Applications Ltd but those were photocopies and the original documents were required as specified above.
13. With regard to category "UK Experience" for the reasons already set out in the claimant was not entitled to the five points claimed. It has to be noted that in other categories the claimant had met and indeed exceeded the requirements of the rules but had failed to achieve the overall score required, i.e. 80 points.

14. Before the judge additional documentation had been submitted by the claimant. In coming to a decision in respect of this matter the judge took into account that additional documentation. In so doing the judge failed to apply the provisions of section 85A set out above.
15. It is for an applicant to ensure that at the time of submitting the documentation to the respondent all of the documents are submitted to meet the requirements of the rules. As here many people genuinely find the rules themselves very difficult to understand. The rules impose a strict regime that has to be met. It is not for a judge to ignore the requirements of the rules or the law even where an individual is honest and credible.
16. It was accepted in respect of the claimant that he is and was genuine and that any failure to meet the requirements of the rules was due to inadvertence. It was accepted on the basis of the documentation at the hearing that the claimant at that time did meet the requirements of the rules.
17. However it was also accepted that the claimant had not submitted the required documentation with the original application.
18. The consequence to the claimant is that the claimant will have to make a further application. It was accepted that he would have 28 days from the date of his appeal being dismissed to make an application. Thus from any decision made in the Upper Tribunal the claimant will have 28 days to present a fresh application. Whilst I appreciate that that will require him to pay a further fee it is the failure of the claimant in the first instance to comply with the requirements of the rules as to the documentation that had to be submitted that has resulted in this outcome.
19. The claimant would do well to carefully consider the requirements of the rules and ensure that all documentation submitted complies with those requirements. That having been said however it is clear that the judge has failed to apply the provisions of section 85A and has based his findings of fact on evidence which in the circumstances had not been submitted with the application. That is a material error of law on the part of the judge and the decision has to be set aside.
20. In this case this was a matter of assessing what documentation was submitted with the application and whether that met the requirements of the rules. The claimant accepted that he had had to submit further documentation in order to meet the requirements of the rules.
21. In those circumstances I was satisfied that this appeal can be dealt with on the basis of the evidence and documents currently submitted. Unfortunately for the claimant who is a genuine applicant he does not meet the requirements of the rules with regard to the documentation submitted for the reasons set out above. Accordingly this appeal has to be dismissed.

22. In the circumstances there is a material error of law in the determination. I set aside the original decision and substitute the following decision

- a) The appeal is dismissed on Immigration Rules grounds.
- b) The appeal is dismissed on ECHR grounds.

Signed

Date

Deputy Upper Tribunal Judge McClure