



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

Appeal Number: OA/13521/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 22<sup>nd</sup> July 2014**

**Determination**

**Promulgated**

**On 5<sup>th</sup> August 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR SUMIT SHANTILAL GOHEL  
(NO ANONYMITY ORDER BEING APPLIED FOR OR MADE)**

Respondent

**Representation:**

For the Appellant: Mr G Saunders, Home Office Presenting Officer

For the Respondent: No Representative

**DETERMINATION AND REASONS**  
**EX TEMPORE JUDGMENT**

1. The Appellant was the Respondent in the First-tier Tribunal and for convenience I refer to the parties as they were known in those proceedings.
2. The Respondent appeals with permission the decision of the First-tier Tribunal Judge Naphine promulgated on 7<sup>th</sup> January 2014 in which the judge upheld or allowed the Appellant's appeal against his removal pursuant to Section 10 of the Immigration and Asylum Act 1999. The

Appellant had brought the appeal on the grounds that the decision was not in accordance with the law because it was predicated upon an unlawful decision in the context of the Immigration Rules.

3. The grounds before me challenging the decision on the basis of jurisdiction rely on the Appellant having failed to establish by evidence that at the time of the Respondent seeking to take his fee that he had the sufficient funds in his bank account. I find no merit in that ground as the evidence before the judge and referred to in the decision indicates that the judge took into account that there were sufficient funds in his bank account at the relevant time.
4. The Respondent had sought to adduce additional evidence and I have refused that application. The evidence was available to the Respondent to adduce before the First-tier Tribunal Judge and there was no proper good reason as to why that evidence should be admitted now.
5. With regard to Ground 2 of the grounds relying on a material misdirection in terms of Rodriguez [2013] UKUT 00042. I find that there is significant merit. The Appellant's position falls squarely within the factual matrix of the Appellant Mr Mandalia in the Rodriguez case, and as such his position is of an applicant who has failed to provide the specified documentation. In the Rodriguez case Mr Mandalia had failed to provide bank statements covering the whole of the relevant period in that he failed to provide bank statements which covered the period of the last seven days within the 28 day period prior to the application, and the court held in that case that the failure to adduce the specified evidence was of itself a factor which would mean that the appeal would be bound to fail.
6. Applying that case to the circumstances of this Appellant I am satisfied that his appeal before Judge Napthine was bound to fail on the basis that he had failed to provide the specified evidence required under the Immigration Rules, to the point that the removal decision was not predicated on an incorrect or unlawful application of those Immigration Rules, and that the removal decision was lawful.
7. There are no other Grounds of Appeal concerning the decision of the judge and accordingly I am satisfied that the judge made a material error of law such that the decision needs to be set aside and I remake it dismissing the appeal of the Appellant for all of the reasons that I have given.

Signed

Date

Deputy Upper Tribunal Judge Davidge