



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

Appeal Number: IA/17335/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 27 February 2015**

**Decision & Reasons Promulgated
On 12 March 2015**

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR MD AKTERUZZAMAN

Respondent

Representation:

For the Appellant: Ms A Everett, Home Office Presenting Officer

For the Respondent: Mr S Hyder, Legal Representative

DECISION AND REASONS

1. The Secretary of State has been granted permission to appeal the determination of First-tier Tribunal Judge Eldridge who in a determination promulgated on 1 December 2014 allowed the appeal of the respondent against the refusal of his application for leave to remain as a Tier 4 (General) Student Migrant. The respondent was required to obtain 10 points in respect of funds relating to his maintenance under Appendix C. These points were not issued to him because details concerning a bank account used to demonstrate those funds had been

“proven to be false”. Accordingly the application was refused under paragraph 322(1A) of the Rules on the basis that false documents had been submitted in relation to the application.

2. The Secretary of State relied on a Document Verification Report from an Entry Clearance Assistant in the British High Commission in Dhaka. The assistant concerned had been asking whether First Security Islami Bank Limited could verify a letter dated 21 November 2013 that was attached to the report and a statement generated on the same date. The letter is said to have been issued by Mr Hossain, Assistant Manager of the Dovashi Bazar Branch and the statement referred to the same branch. The judge held as follows:

“14. In the section entitled ‘Financial Document Verification’ the documents concerned are described as a bank solvency letter and a bank statement. The ‘Branch Locations (sic)’, however, is described as ‘Head Office’. The officer reports that the bank was called on 06 February 2014 using a telephone number which has been redacted so no-one in these proceedings may see what that number was. The contact suggests that bank records demonstrate that the account concerned existed but that the ‘bank statement and solvency letter was not issued by the said Branch. Both are forged’. It goes on to say that ‘the information held by the bank differs from what is detailed in the documents that were provided in support of the application form’.

15. Allegation of forgery or falsehood is a serious matter. On the face of this document it appears that the head office of the bank concerned was contacted rather than the branch said to have issued the documents and that same head office confirmed that, whilst the account was known to exist, ‘the said Branch’ did not issue the statement and solvency letter. Given that the only reference in this verification document to a branch is that of the head office, it would be surprising if they did have record of the documents because it has been said all along that they have been issued by the Dovashi Bazar Branch and by its assistant manager in particular.

16. On the basis of this document report I am not at all satisfied that the documents relied upon by the Appellant are false. The Respondent has not discharged the burden upon her to demonstrate that they were and refusal under Paragraph 322(1A) cannot be justified. Because the Respondent states in the refusal document that refusal under the substantive Rule, Paragraph 245ZX is based upon the refusal under Paragraph 322, that refusal cannot be in accordance with the Rules either.”

3. The Secretary of State was granted permission to appeal. The first ground challenged the judge’s findings at paragraphs 14 to 16 of the determination. It was said that it is common ground and generally accepted that the identities and contact information of sources on behalf of the Secretary of State are kept anonymous by virtue of potential risks to them in the form of recriminations relating to the information they are providing or potential corruption opportunities. It is also common practice to refer enquiries to the head office of financial establishments (generally referred to in document verification reports as “central points of contact”

who have computerised access to information relating to all their branches and who are considered reliable sources).

4. It was further argued that it was irrational to conclude that a professional establishment would respond negatively to a request for confirmation of documents rather than indicating if that were the case, that they are unable to confirm genuineness due to the documentation not having been issued by that particular branch. In any event the head office also confirmed that the account in question existed and that the information held by the bank differed from that detailed in the documents that were provided with the application form. This fact alone was sufficient to render the documentation false even if it was accepted that there could be elements of doubt over whether the head office was saying that they specifically did not issue the documents or whether they were saying the documents had not been issued by the "said branch" meaning the respondent's branch. Ms Everett relied on the first ground of appeal.
5. The second ground argued that in allowing the appeal outright without consideration of the substantive merits of the case under 245ZX, the Immigration Judge erred in law. The right approach would have been to allow the appeal to the limited extent that it was not in accordance with the law by virtue of the burden to demonstrate forgery had not been made out and therefore remitted back to the Secretary of State for further consideration. Reliance was placed on **RM (Kwok on Tong HC395 para 320) India [2006] UKAIT 00039**. Reliance was also placed on **JF (para 320 refusal: substantive rule) Bangladesh [2008] UKAIT 00008**.
6. Ms Everett did not rely on the second ground. She said that the judge should have considered the substantive merits of the appeal.
7. I found that the document verification report was quite confusing. I agreed with Mr Hyder that the HOPO below did not make the judge aware that verification of bank documents are conducted through the head offices of financial establishments and not the local branch which issued the documents. It appears from the DVR that the assistant contacted the bank by telephone. There was no indication from the report whether the head office official at First Security Islami Bank Ltd who took the phone call had sight of the documents prior to the telephone conversation and had already checked the authenticity of these documents to enable him or her to respond to the questions raised by the ECO's assistant. In the absence of clarity of these matters, I do not find on the evidence before the judge, that his findings at paragraphs 14 and 15 were erroneous. Accordingly I uphold those findings.
8. I find however the judge erred in allowing the appeal without determining the substantive merits of the respondent's application. The issue was whether the respondent had the required level of funds over the relevant 28 day period leading up to the date of application.

9. The date of application was 10 December 2014. Thirty days backwards from the date of application would be 10 November 2013. This means that the respondent was required to show that he was in possession of £1,600 for a consecutive 28 day period to meet the Tier 4 (General) Student maintenance requirements. In view of the Secretary of State's failure to prove that the documents emanating from the Dovashi Bazar Branch were false, I was satisfied on the evidence that the respondent had discharged the burden of proof on him. Accordingly, I find that he was in possession of £1,600 for a consecutive 28 day period and that he met the Tier 4 (General) Student maintenance requirements.

Notice of Decision

10. The respondent's appeal is allowed.

Signed

Date

Upper Tribunal Judge Eshun