



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/27891/2014

THE IMMIGRATION ACTS

Heard at Field House
On 18th December 2015

Decision & Reasons Promulgated
On 12th January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MR MUHAMMAD AHSAN
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Messrs Farani Javid Taylor, Solicitors (in writing)
For the Respondent: Mr P. Nath, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Pakistan born on 1st March 1988. He appealed against a decision of the Respondent dated 20th November 2014 to refuse his application for leave to remain as a Tier 4 (General) Student under the points-based system. The Appellant wished to study for a BA (Honours) degree in marketing at the London School of Marketing. His appeal was allowed at first instance by Judge of the First Tier Tribunal Watt sitting at Hatton Cross on 18th June 2015. The Respondent appeals

with leave against that decision. For the reasons which I have set out below (see paragraphs 13 to 18) I have set the First Tier Tribunal's decision aside on the grounds of a material error of law and have reheard the appeal. Thus although this matter came before me originally as an appeal by the Respondent, for the sake of convenience I will continue to refer to the parties as they were known at first instance.

2. The Appellant arrived in the United Kingdom on 9th February 2008 after being granted leave to enter as a student valid from 23rd January 2008 until 31st October 2011. He then extended his leave to remain in the United Kingdom as a Tier 4 (General) Student and his last leave to remain was granted from 21st February 2013 until 20th April 2014. On 19th April 2014 he submitted his application for further leave as a Tier 4 (General) Student the refusal of which has given rise to the present proceedings.
3. The Appellant was required to show that he was in possession of the sum of £2,000 for a consecutive 28 day period to meet the Tier 4 (General) Student maintenance requirements of Appendix C. The Respondent refused the Appellant's application because although the Appellant had submitted a bank statement which showed an account with more than £2,000 in it the statement did not show the account holder's name and thus did not comply with the requirements of paragraph 245ZX(d). The Appellant was awarded 30 points for Confirmation of Acceptance for Studies (CAS).
4. The Appellant appealed against that decision arguing that the Respondent should have afforded the opportunity to the Appellant to provide confirmation that the account in the bank statement was indeed his. Flexibility should have been exercised by the Respondent. The bank account statement had not been delivered to the Appellant at the time he was making the application which was why he attended on a branch of the Halifax who stamped the copied statement. The bank would not have stamped and verified those statements had they not been his. He was a genuine student and had more than enough funds for the required maintenance. Furthermore the decision breached Article 8 of the Human Rights Convention. The grounds gave scant details of what this breach involved.

The Proceedings at First Instance

5. Although the Appellant paid a fee of £140 entitling him to an oral hearing the Appellant's solicitors wrote to the Tribunal on 8th April 2015 stating that their client's instructions were that they would like the Tribunal to deal with the matter on the papers. The matter had been listed for hearing on 14th April but in light of the request for the matter to be determined on the papers the case was put back and thus came before Judge of the First-tier Tribunal Watt on 18th June 2015 when he decided the matter on the papers.
6. Judge Watt wrote:

“6. The Appellant explains in his statement that in order to comply with the requirements for his visa he had to provide a personal bank statement to show a balance of over £2,000 for more than 28 days. He explained that he did not have his original bank statement at the time of his application so he asked his bank, Halifax, to stamp a printout of bank statement. He then sent this to the Home Office. Unfortunately there was no note of his name at the top of these printouts. The Appellant has now produced documentation from the Halifax showing that this account is in fact his account and showing that the balance was over £2,000. The bank account details and sort code details correspond to the printout which was sent by him. The covering letters from the Halifax and a copy of his current account which the Appellant has submitted with this appeal all match the bank data details he provided with the original application. I am satisfied that the printouts which he submitted to the Home Office were in fact relating to his account and did show that there was the sum of £2,000 in his account for more than 28 days. However I understand why the Home Office refused the application as they had no proof that these printouts from the Halifax were in fact from the Appellant’s account.

“7. In all the circumstances I uphold this appeal before me to the extent that the Home Office should now reconsider the application made by the Appellant.”

7. Although the Judge did not say so explicitly, I assume that what the Judge meant was that he found the Respondent’s decision to be not in accordance with the law such that it remained outstanding for the Respondent to take a valid decision. The appeal was allowed to that limited extent.

The Onward Appeal

8. The Respondent appealed against that decision arguing that in allowing the appeal the Judge had taken into account further documentary evidence submitted with the notice of appeal against the Respondent’s decision. This was contrary to the restrictions on post-application evidence in points-based system cases set out in Section 85A of Nationality, Immigration and Asylum Act 2002. The evidence submitted with the original application did not meet the requirements of the Rules and the Judge was bound to dismiss the appeal under the Rules. It was unclear which of the statutory grounds of appeal set out in Section 84(1) of the 2002 Act the Judge considered to be applicable on the facts of this case. The Respondent had granted the Appellant a right of appeal against the decision of 23rd June 2014 stating the Appellant was entitled to appeal the decision to refuse to vary leave and to remove him under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 as amended by the Immigration, Asylum and Nationality Act 2006.
9. The application for permission to appeal came on the papers before Judge of the First-tier Tribunal Nicholson on 29th September 2015. He noted that Appendix C paragraph 1B(ii) of the Immigration Rules required the Appellant to provide bank statements covering a consecutive 28 day period clearly showing the Appellant’s name. Although the Judge had found that the Appellant had sent a printout of his

bank statement with his application that statement did not refer to the Appellant's name. The Judge had allowed the appeal on the basis of post-application documentation from the bank confirming that the account in question was indeed the Appellant's. There was an exception to the operation of Section 85A of the 2002 Act whereby the Judge could consider evidence submitted with the application but those specific circumstances arguably did not apply in this case. I pause to note here that that exception includes for example evidence to prove that a document is genuine. The allegation in this case was not that the document produced by the Appellant was not genuine the allegation was that it did not comply with the evidential requirements of the Immigration Rules, a different matter. Judge Nicholson continued that since the Judge had relied on post-application evidence when allowing the appeal the grounds of the permission application were arguable.

10. Following the grant of permission to appeal the Appellant's solicitors responded to the grounds of appeal under Rule 24 stating that the Appellant opposed the Respondent's appeal. The Judge of the First-tier Tribunal had directed himself appropriately. The bank account and sort code details corresponded to the printout sent at the time of the application and thus it had been proven that the account was in fact the Appellant's account. The Appellant had given his explanation why he did not have an original bank statement at the time of the application and had asked the Halifax to stamp a printout.
11. Reference was made in the Rule 24 reply to paragraph 245AA(b)(iv) of the Immigration Rules. The paragraph provides that if a document does not contain all of the specified information the Respondent may contact the applicant or his representative in writing and request the correct documents. The requested documents must be received at the address specified in the request within seven working days of the date of the request. The Rule 24 reply contended that the Respondent had failed to apply her own published policy regarding points-based system evidential flexibility. The Respondent must refuse an application if it would fall for refusal even if the missing information was provided but in this case if the Respondent had requested additional information the Appellant's application would have been approved. It was open to the Judge to find on the basis of the evidence before him that the Appellant did show that there was a sum of £2,000 in his account for more than 28 days as required by the Rules. The Appellant requested an oral hearing.
12. The appeal was listed for hearing on Friday 18th December 2015. On 10th December the Appellant's solicitors wrote again stating they would like to request the Tribunal to deal with the matter on the papers. Thus when the matter came before me on 18th December there was no attendance on behalf of the Appellant. I heard brief submissions from the Presenting Officer who argued that the Appellant could not succeed under the Rules because the bank statement submitted did not comply with the evidential requirements. As to Article 8, the Appellant's status in this country had been precarious and in accordance with authorities such as **AM Malawi** and **SS Congo [2015] EWCA Civ 387**, little weight could be attached to the Appellant's

private life when assessing the proportionality of any interference with it. The appeal should be dismissed.

Findings

13. The first issue I have to decide is whether there was an error of law in the First-tier Tribunal's decision such that it fell to be set aside. The Judge did not refer to paragraph 245AA(b)(iv) (or any issue of discretion) in allowing the appeal. What the Judge said was that he understood why the Respondent had refused the application as it could not be proved that the document submitted by the Appellant was from the Appellant's account.
14. The document which the Appellant had submitted was marked "view statement entries" and gave a fourteen figure number. There were entries covering the period 3rd March 2014 until 17th March 2014 and to 26th March 2014 and to 3rd April 2014. At no point during that period had the balance fallen below the sum of £2,000. There were a number of payments into the account credited to "Ahsan M" but the Appellant's name did not appear as the account holder and the bottom of the page indicated a website which said "transcrm.lloydstsb.co.uk".
15. It is difficult to see how this document satisfied the evidential requirements in Appendix C. These are: (i) that the statements must clearly show the name of the applicant, the financial institution's name, the financial institution's logo and must be either printed on the bank's or building society's letterhead; (ii) if an electronic bank or building society statement it must be accompanied by a supporting letter from the bank or building society on company headed paper confirming the statement provided is authentic; (iii) If it is an electronic bank or building society statement it must bear the official stamp of the bank or building society on every page. The statements must not be mini statements from automatic telemachines.
16. The document submitted by the Appellant fell foul of a number of these requirements particularly the name of the Appellant but if the document was to come under the category of an electronic bank or building society statement it would have to bear the official stamp of the bank or building society on every page. What the document had was a date stamp from the Halifax but the document itself was only a copy. The Appellant did not on his own admission have the original. This document did not comply with the requirements of the Immigration Rules Appendix C. It was not a document which was part of a series of which one or other were missing. Rather it could be said to be a document in the wrong format, a copy rather than an original and a document which did not contain all of the specified information.
17. If it was the case that one or more of the three circumstances in paragraph 15 above applied then the Respondent had discretion to contact the Appellant or his representative in writing and request the correct documents. Documents need not be requested where a specified document had not been submitted or where the

Respondent did not anticipate that addressing the omission or error would leave to a grant because the application would be refused for other reasons. Given the lack of specified information on the document submitted by the Appellant in this case it is difficult to see how the Respondent could have considered that the deficiencies could be rectified. What the Appellant in fact did for the hearing at first instance was to supply full bank statements from the Halifax under cover of a letter from the Halifax dated 2nd July 2014 almost two weeks after the decision to refuse and thus postdecision evidence. The Appellant had provided no valid reason why he had been unable to submit statements in the form issued by the Halifax to him in July when he made his original application. This case was not caught by the provisions of paragraph 245AA and it was not a case where the Respondent should have considered the exercise of her discretion but did not. It is fair to say that the refusal decision does not contain a reference to the exercise of discretion but for the reasons I have given I do not consider that the issue arose in the first place.

18. The Judge permitted the Appellant to rely on postdecision evidence namely the letter from Halifax and the accompanying full statements. That evidence was prohibited by operation of Section 85A and could not be admitted. The Appellant does not succeed under the Immigration Rules as his application fell for refusal by reason of his failure to comply with the requirements of Appendix C. I set aside the First Tier decision and remake the decision by dismissing the Appellant's appeal under the Rules.
19. The remaining matter is the Appellant's claim that the decision to remove him would disproportionately interfere with his private life. There is no claim to a family life. The Appellant had only been in the United Kingdom for a relatively short time and his immigration status was precarious with no expectation that he would be granted permanent residence. Although few details of the Appellant's private life have been given in this case I accept that he has established a private life during the almost eight years he has been in this country and that private life will be interfered with by requiring him to leave now. The interference will be pursuant to the legitimate aim of immigration control since the Appellant cannot meet the Rules having made an application for further leave which has failed for the reasons given. The issue is whether the interference is proportionate to the legitimate aim being pursued. By reason of the operation of Section 117B of the 2002 Act, little weight is to be attached to the Appellant's private life established whilst his status here was precarious. On the other side of the equation is the considerable weight to be attached to the public interest in removing the Appellant which I find outweighs the argument on the Appellant's side. The decision to refuse the Appellant further leave and to remove him is proportionate to the legitimate aim pursued. The Appellant's appeal also fails under Article 8.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and I have set it aside. I have remade the decision in this case by dismissing the Appellant's appeal against the Respondent's decision.

Appellant's appeal dismissed.

I make no anonymity order as there is no public policy reason for so doing.

Signed this 11th day of January 2016

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Deputy Upper Tribunal Judge Woodcraft

TO THE RESPONDENT
FEE AWARD

As the appeal has been dismissed there can be no fee award.

Signed this 11th day of January 2016

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Deputy Upper Tribunal Judge Woodcraft