



Upper Tribunal

(Immigration and Asylum Chamber) Appeal Numbers: IA/28616/2014 IA/46688/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 29 February 2016**

**Decision & Reasons Promulgated
On 8 April 2016**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

**MR MUKBIL ZAHOOR KHAWAJA
MS MEHWISH JAVAID**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Abbas of Imperium Group Immigration Specialists

For the Respondent: Ms N Willcocks-Briscoe, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal is not subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party has invited me to make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) and I have not done so.
2. The appellant appeals against the decision of the First-tier Tribunal (Judge Shand QC) dismissing the appellants' appeals against a decision taken on 4 November 2014

to refuse an application for further leave to remain as a Tier 1 (Entrepreneur) and dependent and to remove the appellants from the UK.

Introduction

3. The first appellant is a citizen of Pakistan born in 1983 and the second appellant is his wife, also a citizen of Pakistan born in 1980. The appellants have previously been granted leave to remain in the UK as Tier 1 post study migrants. The applications were made on 25 July 2014. With his application the first appellant submitted a letter from Bank Afalah confirming that he held 8.5 million rupees as of 19 June 2014 and that was equivalent to more than £50,000. The respondent wrote to the first appellant on 25 September 2014 requesting original documents to prove that the funds were still available. The deadline was 29 October 2014. The representatives requested an extension until 28 November 2014 and telephone conversations followed on 23 October and 27 October. The representatives wrote to the respondent on 27 October 2014 stating that they had been told that if they did not hear anything then they were to assume that the extension had been granted and requesting written confirmation of the same. By 3.56pm on 4 November 2014 the first appellant had a balance of £51,986.32 in his UK Natwest bank account.
4. The Secretary of State accepted the appellants' identity and nationality but concluded that the first appellant had failed to prove that he still had access to the required funds.

The Appeal

5. The appellants appealed to the First-tier Tribunal and attended an oral hearing at Hatton Cross on 6 July 2015. They were represented by Mr Abbas. The First-tier Tribunal found that the first appellant had failed to submit the required evidence with his application and there was no obligation on the respondent to grant an extension beyond 29 October 2014 to produce the documents requested by the letter of 25 September 2014. The refusal decision was in accordance with the law and the Immigration Rules.

The Appeal to the Upper Tribunal

6. The appellant sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law.
7. Permission to appeal was granted by Upper Tribunal Judge Eshun on 4 January 2016 on the basis that it was arguable that the judge misunderstood that the matter before the First-tier Tribunal was not connected to evidential flexibility but to the unfair behaviour of the respondent.
8. Thus, the appeal came before me

Discussion

9. Mr Abbas submitted that this was an appeal where the respondent had requested further evidence. Common law fairness was not applied correctly. There was a promise that a further deadline extension would be granted. The first appellant had provided the required mandatory information at page 28 of the application form.
10. Ms Willcocks-Briscoe submitted that the first appellant had to show that the funds remained available to the appellant. He had failed to satisfy the Rules. A deadline was given and the deadline had passed. In excess of 28 days was granted. The appeal was adequately considered by the judge in terms of common law fairness at paragraph 14 of the decision.
11. Mr Abbas submitted in response that the judge had approached the matter incorrectly. The judge was unaware that that this was a request for further evidence and the respondent had agreed an extension. The respondent stepped outside her own policy guidelines and it was clear that an extension was granted. The new evidence requested by the respondent was whether the money was still available. The query was not about the documents submitted with the application.
12. I find that the judge did not approach the issue of common law fairness correctly. It is not disputed that the representatives wrote to the respondent on 27 October 2014 stating that they had been told to assume that the extension to 28 November 2014 had been granted. In those circumstances, it was unfair for the respondent to proceed to make an adverse decision, particularly as the required funds were available in the UK by 4 November 2014. This is an appeal which is peculiar to its own facts but it is clear that the common law duty of fairness is sufficiently wide to encompass those facts.
13. Thus, the First-tier Tribunal's decision to dismiss the appellants' appeal under the Immigration Rules involved the making of an error of law and its decision cannot stand.

Decision

14. Consequently, I set aside the decision of the First-tier Tribunal. I remake the decision by allowing the appeals to the extent that the respondent's decision of 4 November 2014 was not in accordance with the law and no valid decision has yet been made in respect of the applications. A fresh decision must now be made in due course.

Signed



Date 29 March 2016

Judge Archer
Deputy Judge of the Upper Tribunal