



IAC-FH-AR-V1

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

Appeal Number: IA/46032/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1<sup>st</sup> December 2015**

**Decision & Reasons Promulgated  
On 5<sup>th</sup> January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between**

**HARWINDER SINGH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Maqsood, Counsel, instructed by Trent Law Solicitors

For the Respondent: Miss J Isherwood, Home Office Presenting Officer

**DECISION AND REASONS  
EX TEMPORE JUDGMENT**

1. The Appellant appeals a decision of the First-tier Tribunal promulgated on 12<sup>th</sup> March 2015. The judge found that the Appellant had not satisfied him that he met the requirements of the points-based system Rules which are referred to in the respondent's reasons for refusal as being set out at paragraph 245ZX(a) and (d). The Grounds of Appeal assert that in reaching that conclusion the judge conflated the evidence concerning an earlier application with the Appellant's current application

and failed to appreciate that he relied on funds from his father held abroad and the funds that were held in the Access Bank account were sufficient to meet the requirements of the Rules, namely that he should hold or have access to £1,600 rather as reflected in bank statements lasting 28 days between 14<sup>th</sup> November 2012 and 11<sup>th</sup> December 2012, the date of the relevant application.

2. In the grant of permission the granting judge points out that the bank statements upon which the Appellant relied were treated by the Secretary of State as being unavailable to the Appellant on the basis that they were false and the allegation of falsehood was supported by an email from the bank which merely stated that the documents were incorrect. The grounds contend that the evidence was insufficient for the Respondent to establish that the documents were false and that in any event the judge failed to make any finding as to whether or not the bank statements were in fact false or not.
3. The Secretary of State contends that the judge's failure to decide whether or not the bank statements were false does not amount to a material error of law, because even if those statements were found not to be false they were inadequate to establish that the Appellant met the financial requirements of the Rules because they did not satisfy the evidential requirements of the points-based system as they were unsupported by the necessary corroborative evidence.
4. Before me Mr Maqsood reluctantly conceded that the application did not contain any of the necessary corroborative evidence and although he made a gallant effort to persuade me that I should look at the discretionary powers under Rule 245AA and decide that the Respondent should have exercised those powers in order to seek the additional evidence, he readily recognised that that was an approach which did not stand scrutiny in light of recent jurisprudence about the limitations of the Rules set out at 245.
5. Reading the judge's decision it is clear that this was a case which was not assisted by the fact that neither the Appellant nor the Respondent were before him, that was of course a matter or a position which arose as a result of the Appellant's request that his appeal should be dealt with in his absence, and so merely on the papers.
6. In that context the Appellant's Grounds of Appeal were grossly inadequate in terms of the complaints which are now raised in respect of the judge's decision. It is quite clear that the Appellant could not establish as at the date of decision or application that he had supported his application by the relevant documentation in respect of his father's bank account to the point that even if the Respondent had not considered it false, the evidence was insufficient to meet the requirements of the Rules.
7. It is also apparent from the decision that the judge gave some consideration to that issue at paragraph 10 although nowhere is it clearly set out as to precisely what corroborative evidence was required. That of course does not detract from the point that absolutely none was provided. Accordingly no error of law is established in respect of the Judge's consideration and decision on the points based decision.

8. The second limb of the appeal before me relates to the respondent's second basis of refusal: that relating to the general ground of refusal on the position of the false statement. The burden is on the Respondent in regard to that, and it is apparent on the face of the judge's decision that the complexities of that position have been overlooked. The judge self-directs in respect of the burden and standard of proof at paragraph 7 referring only to paragraph 245ZX, and makes no reference to paragraph 322, and the different position that arises there and was in error in failing to do so. The judge's decision is flawed by error and the matter I have to decide is what to do about it.
9. I find that it is appropriate for me to set the decision aside and to remake it.
10. In connection with the requirements of paragraph 245 I am satisfied for the same reasons set out above, the Appellant has failed to meet the requirements of the Rules in respect of the evidence necessary to show that he meets the financial requirements under Appendix C when relying upon third party financial support from abroad.
11. So far as paragraph 322 is concerned, the burden is on the Respondent to show that the document produced is false. I am satisfied that the respondent had not met that burden. The email at E of the documents before me, which refers to the documentation submitted to the bank manager as being incorrect, falls short, I find, of establishing that the documents are false. That of course does not mean that I find that the documents are necessarily reliable but because of the fact that the documents are in any event insufficient to meet the requirements of the Rules there is no need for me to reach any conclusion beyond the issue of the Respondent's failure to meet the burden in respect of establishing falsehood.

**Notice of Decision**

12. The Appellant's appeal before me is successful to the limited extent that the FtTJ's decision on paragraph 322 is set aside, but the Appellant's appeal on Immigration Rules grounds relating to 245ZX is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Davidge