



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/03653/2013
IA/03655/2013

THE IMMIGRATION ACTS

Heard at Field House
On 26th July 2013

Determination Promulgated
On 6th August 2013

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ARMAN FAYYAZ
SALMA ARMAN

Respondents

Representation:

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

DETERMINATION AND REASONS

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Devine made following a hearing at Birmingham on 22nd May 2013.

Background

2. The first claimant is a citizen of Pakistan born on 27th March 1982 and the second is his wife and dependant.
3. On 15th February 2012 he applied for further leave to remain as a Tier 4 student. The Respondent wrote to him on 19th July 2012 following the revocation of the licence of his proposed college stating that consideration of the application would be suspended for a period of 60 calendar days during which time it was open to him to submit a fresh application in a different category or to leave the UK. On 15th September 2012 he varied his application.
4. The claimant provided, with the application, a letter from the Bank of the Punjab confirming that a Mr Muhammad Fayyaz had been issued with a loan. In his covering letter he explained that he was awaiting an affidavit from his father, Muhammad Fayyaz, confirming that the funds referred to in the bank letter were available to him.
5. The Secretary of State refused the application on 14th January 2013 on the grounds that the bank letter was not in his name and not acceptable evidence that the requisite funds were available to him. The judge said that the claimant had been funded by his father since he first came to the UK in 2006. In order to support the current application his father secured a loan and the Secretary of State was made well aware of it some four months before the date of decision. The claimant had made the situation entirely clear in his application and covering letter and the judge concluded that the documents supplied by him clearly showed that he was supported by his father and that the money was available.

The Grounds of Application

6. The Secretary of State sought permission to appeal on the grounds that there was no evidence that the claimant had access to the loan and he did not send the signed affidavit with the application. The affidavit of 10th September 2012 said that the loan had been received and the funds were available but the letter from the bank dated 14th September 2012 was four days later. There was no evidence to show that the loan was genuinely available and that the Secretary of State had been deprived of giving detailed consideration to the documents.
7. It was also submitted that the judge had failed to give adequate reasons for admitting evidence that he was arguably prevented from considering by the operation of Section 85A of the Nationality, Immigration and Asylum Act 2002.
8. On 24th June 2013 Designated Judge Shaerf said that the Secretary of State was represented at the hearing and the Tribunal file did not disclose that there was any application for an adjournment to consider the authenticity of the documentary evidence. The Presenting Officer's concerns were recorded in the determination and the judge gave sustainable reasons for accepting the documents and for finding that the claimant would continue to be maintained in his studies by his father.

9. However he then went on to state that the grounds correctly and properly assert that the judge arguably erred in law by taking into account documents which were subsequent to the application and are inadmissible evidence by reason of Section 85A of the Nationality, Immigration and Asylum Act 2002 as amended by Section 19 of the UK Borders Act 2007.

The Hearing

10. Ms Everett said that she was not instructed to withdraw the challenge to the determination but she had nothing to say to advance the grounds upon which permission was granted.

Findings and Conclusions

11. The Secretary of State was not given permission to argue that the judge should not have accepted that the affidavit established that the loan was genuinely available. That was a matter for the judge and any grounds challenging that aspect of his decision are a plain disagreement with it and nothing more.
12. With respect to the Section 85A point, the judge was entitled to consider the evidence because it was before the Secretary of State at the date of application, namely evidence that the claimant's father had been supporting his studies since 2006, the letter from the Bank of the Punjab dated 14th September 2012 confirming that the father had been issued with a loan and finally a letter from the claimant himself confirming that his father had signed an affidavit in confirmation that the sums referred to in the letter were available to him and the affidavit had been posted to him from Pakistan. Moreover arguably, even if he had considered the affidavit, it would not be inadmissible under Section 85A since it was adduced to show that the bank loan was valid.

Decision

13. The judge's decision stands.

Signed

Date

Upper Tribunal Judge Taylor