



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/06316/2013

THE IMMIGRATION ACTS

Heard at Field House
On 22 August 2013

Determination Promulgated
On 28th October 2013

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

NOOR MUHAMMAD
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Ms Martin

DETERMINATION AND REASONS

1. The Appellant is a citizen of Pakistan born in 1982. He appealed against a decision of the Respondent on 15 February 2013 to refuse to vary the Appellant's leave to remain made on 23 November 2012.

2. The Respondent considered the application, which was made on 23 November 2012, under paragraph 245ZX and Appendices A and C of the Immigration Rules. Although satisfied on Appendix A the Respondent was not satisfied that the Appellant had the requisite evidence of funds for maintenance (Appendix C).
3. As a person studying in inner London it was stated that the Appellant needed to show that he had the required funds to cover the fees for the first academic year and £1,000 per month for two months. It was accepted that his fees for the first year had been paid.
4. As for the £2,000 maintenance he had to show that he was in possession of that amount for a consecutive 28 day period as required by paragraph 1A of Appendix C.
5. As the closing date of the bank statements submitted in support of the application was dated 12 November 2012 he needed to show evidence of £2,000 maintenance for 28 days from 16 October 2012 to 12 November 2012.
6. However, between 12 October 2012 and 25 October 2012 his bank statements indicated that he was in possession of no more than £941.06. Although the necessary funds were in place between 25 October 2012 and 12 November 2012, such was less than 28 days.
7. The Appellant appealed. In his grounds he stated that with his application he had submitted a bank statement for the period 12 October 2012 to 12 November 2012. Also, further documentation from the bank covering the period 12 November 2012 to 22 November 2012. Looked at together these documents showed evidence of funds of at least £3,429 for 28 days, i.e. from 25 October 2012 to 22 November 2012.
8. The appeal was heard before Judge of the First-tier Tribunal Howard at Hatton Cross on 14 June 2013. In his brief findings the judge (at [13]) stated “on the 23 November 2012 the Appellant had £2,029.64 in his bank and the bank statement submitted with his Notice of Appeal covering the period 25 October 2012 to the 23 November 2012 shows that during this period his account held more than £2,000.”
9. He went on, however, to state that as under s85A of the Nationality, Immigration and Asylum Act 2002 he was only permitted to consider evidence which “was submitted in support of, and at the time of making, the application to which the immigration decision related” and as the “bank statement which shows the correct funds for the correct period was not submitted with the application”, the appeal had to be dismissed under the Rules.
10. The Appellant sought permission to appeal which was granted by a judge on 15 July 2013 who stated:

“ ...

2. *The Judge was not satisfied that the Appellant had demonstrated the required funds for the continuous 28 day period. The Appellant submits that the Judge*

misunderstood the evidence presented with respect to available funds. It is submitted that in the absence of further transactions the Judge should have understood that the balance remained constant after the last transaction shown. It is submitted that had the Judge looked at the date on the statement taken together with the date of the last translation he would have found that the Appellant demonstrated that he did have the requested funds.

3. *The grounds are arguable."*

11. At the error of law hearing before me Mr Muhammad essentially adopted his grounds. For the Respondent Ms Martin accepted that the judge had erred in failing to note that bank documents had been provided with the application which indicated that the Appellant had the necessary funds from 12 November 2012 to 22 November 2012 and that when looked at with the evidence of adequate funds in the period 25 October 2012 to 12 November 2012 such showed that as a matter of fact he held the required funds for the required 28 days. The problem was that the bank document for the later period (12 November to 22 November) was not in the form required by the Rules. Thus as a matter of law he did not have the funds.
12. I reserved my decision.
13. In considering this matter the sole issue is maintenance. Paragraph 245ZX(d) requires that an Appellant must have a minimum of 10 points under paragraph 10 to 14 of Appendix C. Paragraph 11 of Appendix C requires an applicant studying in inner London to show funds for the first academic year plus £1,000 for the first two months.
14. Paragraph 1A(a) requires the Appellant to have had the funds specified at the date of application. Also, "(c) if the Appellant is applying as a Tier 4 Migrant the applicant must have had the funds referred to ... for a consecutive 28 day period of time."
15. In this case it is not disputed that the Appellant lodged with the application a copy of a NatWest bank statement covering the period from 12 October 2012 until 12 November 2012. The statement shows a maximum balance of £941 from 12 October 2012 until 25 October 2012. From that date until 7 November 2012 it shows a balance above £2,000. While the judge noted that bank statement he apparently failed to note another NatWest document (C4) dated 22 November 2012 which was lodged with the application. It shows a balance of more than £2,000 in the period 25 October 2012 to 7 November 2012 (in confirmation of the bank statement). In addition, it shows no transactions between the date the statement was produced (12 November 2012) and the date of the bank document i.e. 22 November 2012.
16. The clear indication, as Ms Martin accepted, was that in the bank information provided with the application the Appellant had the required £2,000 in his account in the period 25 October 2012 to 22 November 2012 not just 25 October to 12 November, thus a period of 28 days.

17. Ms Martin's point was that while the judge may have erred in not taking account of bank evidence that was lodged with the application and was before him it was not material as the evidence was not in the prescribed form. She referred me to paragraph 1B of Appendix C and suggested that under 1B(c) the document (C4) was a supporting letter from the bank and that it did not satisfy the Rules as it was not stamped or certified.
18. It seems to me that the document at C4 is clearly not a bank letter. Nor is it strictly a statement. It is headed "Account Transaction Details" and is a summary of transactions from 25 October 2012 until the details were sought on 22 November 2012.
19. The difficulty in my judgment with Judge Howard's determination is that he failed to pay heed to the Appellant's Grounds of Appeal where he stated that the Respondent "was obliged to ask for further evidence if it was considered that some document is missing from the application."
20. Paragraph 245AA of the Rules states that
 - (a) where Part 6A or any appendices referred to a Part 6A state that specified documents must be provided, the UK Border Agency will only consider documents submitted with the application, and will only consider documents submitted after the application where sub-paragraph (b) applies.
 - (b) the sub-paragraph applies if the applicant has submitted ...
 - (ii) a document in the wrong format; or
 - (iii) a document that is a copy and not an original document, the UK Border Agency will contact the applicant or his representative in writing, and request the correct documents"
21. The evidence in this case, as accepted by Ms Martin, was that the Appellant provided adequate evidence that he had the required funds for 28 days prior to the application. However, the evidence in that regard covering the period 25 October 2012 to 22 November 2012, an "Account Transaction Details" from NatWest was not in the proper format and, indeed, was a photocopy.
22. It is clear that the Respondent did not contact the Appellant as required by paragraph 245AA. Further, it is clear that paragraph 245 AA (c) does not apply. Had the error referred to in (b) been addressed such would have led to a grant there being no other basis for it to be refused. The Respondent's decision was, accordingly, not in accordance with the law. Judge Howard materially erred in failing to consider paragraph 245AA despite the issue having been raised in his grounds by the Appellant. The determination is set aside.

Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. It is set aside and remade as follows:

The appeal is allowed to the extent that the decision of the Respondent is not in accordance with the law.

Signed

Date 28th October 2013

Upper Tribunal Judge Conway