



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/07508/2013

THE IMMIGRATION ACTS

Heard at Field House
On 19 November 2013

Determination Promulgated
On 12 December 2013

Before

UPPER TRIBUNAL JUDGE LATTER
UPPER TRIBUNAL JUDGE DEANS

Between

MR GOPALAKRISHNAN GOMATHINAYAGAM
(Anonymity order not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Neither present nor represented
For the Respondent: Mr G Saunders, Home Office Presenting Officer

DETERMINATION AND REASONS

- 1) This is an appeal with permission granted by the Upper Tribunal against a decision by Judge of the First-tier Tribunal Archer. The appeal was brought before the First-tier Tribunal against a decision to refuse leave to remain as a Tier 4 (General) Student Migrant and against a decision to remove the appellant under section 47 of the Immigration, Asylum and Nationality Act 2006. The appeal was dismissed insofar as it concerned the refusal of leave to remain and allowed to the limited extent that the decision to remove the appellant under section 47 was unlawful.

- 2) The appellant entered the UK as a student in November 2011. His application for an extension of his leave was refused on 21 February 2013 because the appellant had not submitted an original bank statement as evidence that he satisfied the relevant maintenance requirement. The appellant submitted a bank statement in the form of a printout, described by the respondent as an “ad-hoc printout bank statement”, but this was not in the form required by the Immigration Rules. According to the respondent, the appellant had to show that he had £3,500 to meet maintenance and course fees.
- 3) Before making the refusal decision the respondent wrote to the appellant on 4 February 2013 requesting that an original bank statement be submitted but, according to the respondent, the appellant failed to do this. According to the Judge of the First-tier Tribunal, the appellant’s case was that he had not been contacted by the respondent to request any missing documents. The appeal was considered by the judge without a hearing and, apart from the grounds of appeal, there was no statement from the appellant before the judge. Accordingly the judge found that there was no evidence that the appellant had not received the respondent’s letter of 4 February 2013 requesting the bank statement in the proper form. The respondent’s letter had been sent to the same address as the refusal letter. The judge found that the appellant had not provided a bank statement which complied with the requirements of the Immigration Rules.
- 4) In the application for permission to appeal to the Upper Tribunal it is contended that the appellant had sufficient funds for maintenance in the State Bank of India but evidence of this was delayed in the post on the way from India. It was acknowledged that the respondent had written to the appellant on 4 February requesting the original bank statement. The appellant posted this to the respondent at the wrong address. The statement was sent to UKBA Croydon instead of the address in Sheffield from which the respondent’s enquiry had emanated. It was further submitted that a bundle had been sent to the Tribunal for the purpose of the appeal and the judge was wrong not to have had regard to this. It was pointed out that there is an exception to section 85A of the Nationality, Immigration and Asylum Act 2002 which would have allowed the judge to consider the bank statement in the correct format even though it was not submitted with the application. In the determination the judge had failed to have regard to this provision.
- 5) Reliance was also placed upon a breach of the appellant’s human rights and on the principle of fairness.
- 6) Permission to appeal was granted on the basis that it was arguable there had been a procedural irregularity in that the appellant had replied to the respondent’s letter of 4 February 2013 but had posted the original bank statement to the wrong address. In addition, it was arguable that the documents on which the appellant sought to rely had not been taken into account by the judge.
- 7) At the hearing before us there was no appearance by or on behalf of the appellant. We noted that the notice of hearing had been sent to the last known address for the

appellant. There was no explanation for the appellant's absence. Having regard to the interests of justice we decided to proceed with the hearing.

- 8) In considering this appeal we noted that the appellant has made differing assertions regarding his alleged failure to submit the original bank statement. In his grounds of appeal to the First-tier Tribunal, he stated that he did not receive the letter of 4 February 2013 from the respondent requesting the original bank statement. The Judge of the First-tier Tribunal decided the appeal with regard to these grounds but, because of the absence of evidence from the appellant, was not satisfied that the appellant had not received the respondent's letter.
- 9) By the time the appellant was making his application for permission to appeal to the Upper Tribunal, his position had changed. According to paragraph 5 of the application, the appellant sent off the original bank statement but to the wrong address, as already noted, namely UKBA Croydon rather than the address in Sheffield given on the respondent's letter of 4 February 2013. It is not wholly clear from paragraph 5 of the application whether the appellant submitted the bank statement on his own initiative prior to 4 February 2013 or whether he was indeed replying to the respondent's letter of that date. In paragraph 12, however, the appellant accepts that he received the letter dated 4 February 2013 but again states that he posted his bank statement to a different address from the address given on the respondent's letter.
- 10) It is possible that neither the original grounds of appeal to the First-tier Tribunal nor the application to the Upper Tribunal were drafted by the appellant personally, although no representative is named. Nevertheless, the grounds of appeal and the application for permission to appeal contain conflicting statements about whether or not the appellant received the respondent's letter of 4 February 2013 and submitted his original bank statement in response to it. The appellant did not appear before us to clarify these apparently contradictory assertions. For the purpose of the hearing before us, the appellant lodged a document described as a Witness Statement. It is not signed or dated. It repeats the appellant's assertion that he sent the original bank statement to Croydon instead of to Sheffield. There is no evidence before us to suggest that this statement was before the Judge of the First-tier Tribunal or indeed that a bundle of documentary evidence was submitted by the appellant to which the Judge of the First-tier Tribunal failed to have regard.
- 11) On the basis of the evidence before the First-tier Tribunal we are satisfied that the judge was entitled to reach the decision made in respect of the bank statement, namely that the original bank statement was not submitted by the appellant in response to the respondent's request and that, accordingly, the appellant did not meet the maintenance requirements of the Immigration Rules. It was submitted on behalf of the appellant that the judge wrongly sought to exclude the original bank statement under section 85A of the 2002 Act. Although the judge referred at some length to section 85A and, as already noted, did not mention the exception for evidence adduced to show that a document is genuine or valid, on which the appellant might have relied, the basis of the decision is that the appellant failed to provide a bank statement in the correct form,

not that a bank statement in the correct form was provided too late to be taken into consideration. Accordingly, the judge did not fail to apply the provisions of section 85A correctly by excluding a document which ought to have been admitted.

- 12) It was further submitted on behalf of the appellant that the decision did not take account of fairness and did not take proper account of his Article 8 rights. We note that the judge referred to the decision in Thakur [2011] UKUT 00151 on the principle of fairness and by implication concluded that the decision was not unfair. We see no reason to interfere with this aspect of the judge's decision. The judge went on to consider the appellant's right to private life but found that the refusal decision was not disproportionate. The judge's reasoning in this regard is adequate and we see no basis for finding any error or law in relation to it.
- 13) In conclusion, if there is any inadequacy in the judge's decision, it is that the judge's analysis of the effect of section 85A of the 2002 Act was incomplete but, having found that the required bank statement was not produced, the judge did not make an error of law in dismissing the appeal under the Immigration Rules.

Conclusions

- 14) The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
- 15) We do not set aside the decision.

Anonymity

- 16) The First-tier Tribunal did not make a direction for anonymity and we see no reason for making an order to that effect.

Signed

Date

Upper Tribunal Judge Deans