



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/24162/2012

THE IMMIGRATION ACTS

Heard at Field House
On 26th July 2013

Determination Promulgated
In 12th August 2013

Before

UPPER TRIBUNAL JUDGE RENTON

Between

NOUMAN YOUSA
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant is a male citizen of Pakistan born on 18th December 1988. The Appellant arrived in the UK on 17th December 2010 when he was granted leave to enter as a Tier 4 (General) Student Migrant until 30th April 2014. That leave was

subsequently curtailed in order to expire on 17th June 2012. The Appellant applied for further leave to remain in the same capacity, but that application was refused for the reasons given in the Respondent's letter of 15th October 2012. The Appellant appealed, and his appeal was heard by Judge of the First-tier Tribunal Aujla (the Judge) sitting at Taylor House on 23rd April 2013. He decided to allow the appeal under the Immigration Rules for the reasons set out in his Determination of 24th April 2013. The Respondent sought leave to appeal that decision, and, on 17th May 2013, such permission was granted.

2. At the hearing before me there was no appearance by or on behalf of the Appellant. I decided to hear the appeal in the absence of the Appellant under the provisions of Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008. I was satisfied that the Appellant had been notified of the hearing and I considered it in the interests of justice to proceed with the hearing.

Error of Law

3. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
4. The application for leave to remain was refused under the provisions of paragraph 245ZX(d) of the Statement of Changes in Immigration Rules HC 395. This was because the Appellant failed to score 10 points for Maintenance (Funds) under Appendix C. Although the Appellant had paid the course fees of £3,050, he had failed to show that he had the required maintenance funds of £2,000 for the relevant consecutive 28 day period. The Appellant had produced evidence of such funds held by his Sponsor, Chaudhary Muhammad Yousaf, but had failed to provide any evidence of his relationship to this person.
5. The Judge allowed the appeal as he found that the Appellant was the son of his Sponsor on the basis of the evidence provided by the Appellant's passport and an affidavit from the Sponsor dated 27th August 2012.
6. At the hearing Mr Tufan argued in accordance with the grounds of application that the Judge had erred in law in that the evidence relied upon by the Judge for his finding did not comply with the requirements of paragraph 13B of Appendix C to the Immigration Rules.
7. I find that I am in agreement with Mr Tufan. In order to score the necessary points for Maintenance (Funds) the Appellant relied upon funds held by his father. That is allowed by paragraph 13 of Appendix C which states as follows:

"13. Funds will be available to the applicant only where the specified documents show or, where permitted by the Rules, the applicant confirms that the funds are held or provided by:

- (ii) The applicant's parents or legal guardians, and the parents or legal guardians have provided written consent that their funds may be used by the applicant in order to study in the UK."

However, paragraph 13B of Appendix C states as follows:

"13B. If the applicant is relying on the provisions in paragraph 13(ii) above, he must provide:

- (a) one of the following original, or notarised copy, documents:
 - (i) his birth certificate showing names of his parents,
 - (ii) his certificate of adoption showing the names of both parents or legal guardian, or
 - (iii) a Court document naming his legal guardian."

8. It is not in dispute that the Appellant has not produced any of these documents, and therefore he has failed to comply with the requirements of paragraph 13 of Appendix C in which event he does not score sufficient points for Maintenance (Funds) to meet the requirements of paragraph 245ZX(d) of HC 395. I find that the Judge erred in law in finding to the contrary and I set his decision aside.

Remade Decision

9. I remake the decision by dismissing the Appellant's appeal for the reasons given above.

Decision

The making of the decision of the Judge of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remake the decision in the appeal by dismissing it.

Anonymity

The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I see no reason to do so.

Signed

Date 12th August 2013

Upper Tribunal Judge Renton

TO THE RESPONDENT
FEE AWARD

In the light of my decision to remake the decision in the appeal by dismissing it, I have considered the fee award made by the Judge of the First-tier Tribunal. As I have dismissed the appeal, I make no fee award.

Signed

Date 12th August 2013

Upper Tribunal Judge Renton