



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/02735/2014

THE IMMIGRATION ACTS

Heard at Field House
On 27th August 2014

Determination Promulgated
On 28th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between
(Anonymity Direction Not Made)

Sohaib INAYAT

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Ahmad instructed by Khans Solicitors
For the Respondent: Mr Kandola, Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan and born on 21st March 1989. He made an application on 22nd November 2013 to remain in the United Kingdom as a Tier 4 General (Student). Under paragraph 245ZX of the Immigration Rules he was required in part to show he was in possession of £1,600 for a consecutive 28 day period, that period ending on a date no earlier than one month prior to the application. On 20th November 2013 the bank statement he submitted showed a balance of £1,432.70 and his application was therefore refused.

2. First-tier Tribunal Judge Morrison dismissed the appellant's appeal on 6th June 2014 because the appellant had failed to show the requisite funds for the requisite period. The appellant had maintained at the appeal that he sent his Halifax Bank statements with the application form but also sent bank statement from Barclays Bank. The judge did not accept that and decided the appellant therefore had not shown he had the required funds.
3. An application for permission to appeal was made on the basis that the judge had erred in law because he had not given sufficient reasons as to why the appellant would not have submitted his bank statement from Barclays, as he claimed, given that he gave clear and consistent evidence as to why he did not mention the Barclays bank statement in the cover letter dated 22nd November 2013.
4. In the alternative the judge should have allowed the appeal under the common law duty of fairness. The appellant recognised that the respondent had no duty to rectify defects in the application but the appellant had paid £406 for his application and he had an expectation that if further evidence was required he could be contacted.
5. Permission to appeal was granted by Judge Simpson of the First Tier Tribunal.

Conclusions

6. The Immigration Rules specify that the appellant must demonstrate that funds are available for the 28 day period prior to the date of the application (Appendix C) and in this instance the period ran from 25th October 2013 to 21st November 2013. The balance in the account fell to £1,432.70 on 20th November 2013. The rules state under 1A of Appendix C that the end date of the 28 day period will be taken as the date of the closing balance on the most recent of the specified documents (bank statements). In this case it was 21st November 2013.
7. Quite simply the judge came to the conclusion at [17] that he did not accept that the appellant sent the Barclays Bank statement to the respondent with the application on 22nd November 2013 and thus the respondent was under no duty, further to paragraph 245AA, to request further information. The judge clearly set out his reasoning at [17]. He found the covering letter, dated 22nd November 2013, sent by the appellant to the respondent with the application did not refer to the Barclays Bank statement. The judge recorded that if the appellant knew when he sent in the application that there was a shortfall he would have amended the letter or copied the statements he said he sent with the letter. He did neither. These were the reasons the judge gave for not accepting the appellant's claim that he submitted, in addition to the Halifax statements which revealed a shortfall, the Barclays statement which would have corrected the shortfall. There was no error of law in the judge's reasoning or in the adequacy of that reasoning.
8. The judge considered whether the treatment was unfair and found it was not. The appellant was aware of the requirements for maintenance and indeed the judge recorded the appellant confirmed in his own application he had £1,600 available to him.

9. The authorities passed to me of **Patel (revocation of sponsor licence -fairness) India** [2011] UKUT 00211 IA and **Naved (Student Fairness notice of points)** [2012] UKUT 14 (IAC) can be distinguished on the basis that in those cases there was no culpability on the part of the appellant. In this case it was the responsibility of the appellant to ensure that he had the funds in his account which he said he did. In fact he did not. The judge found that the appellant simply did not check the details of his Halifax account [18]. It is unfortunate that the appellant was only short of the relevant funds for one day but as the judge correctly cites, **Patel and Others v SSHD** [2013] UKSC 72 brooks no near miss arguments.
10. The application is merely a disagreement with the judge's findings. There was no material error of law and the determination shall stand.

Signed

Date 27th August 2014

Deputy Upper Tribunal Judge Rimington