



UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: IA/14866/2014

THE IMMIGRATION ACTS

Heard at: Field House  
On: 18 September 2014  
Prepared: 29 September 2014

Determination Promulgated  
On: 01 October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR TASWAR ABBAS  
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer  
For the Respondent: Mr T J Pasha, Solicitor (Pasha Law Chambers)

DETERMINATION AND REASONS

1. For the sake of convenience I shall refer to the appellant as the secretary of state and the respondent as "the claimant."
2. The appellant is a national of Pakistan, born on 1<sup>st</sup> December 1992. He appealed to the First-tier Tribunal following the refusal of his application for leave to remain in the UK as a Tier 4 (General) Student Migrant. The secretary of state refused his application on 12<sup>th</sup> March 2014, contending that he was not entitled to receive any points under Appendix C for maintenance (funds) as he had not provided evidence of the relationship to the account holder whose bank documents he produced.

3. The claimant in his grounds of appeal asserted that he had provided an affidavit from his father confirming the relationship and sponsorship. He understood that the respondent had the records of his father in the system as these have been submitted with his application for entry clearance.
4. He also contended that “flexibility policy” should have been applied in his case and that the secretary of state could have requested additional documents.
5. In his witness statement produced before the First-tier Tribunal dated 10<sup>th</sup> May 2014, he ‘confirmed’ that an original affidavit from his father and a bank statement had been submitted.
6. The First-tier Tribunal Judge considered the claimant's appeal as a paper case.
7. The Judge referred to the application made by the appellant on 26<sup>th</sup> November 2013 in which a copy of the affidavit in support by his father had been submitted, including a copy of his Pakistani passport stating his father's name. The secretary of state has not taken any issue with regard to the bank statement itself or the availability of the funds.
8. The Judge found at paragraph 16 that the claimant submitted a bank statement in his father's name and there were additional documents confirming both his father's willingness to support him and also the claimant's passport showing his father's name.
9. At paragraph 17, the Judge noted that the claimant accepted that he had not provide a birth certificate at the date of the application, although that has now been provided with the appeal documents.
10. Taking into account the documentation available, the Judge found that “it would appear” that the claimant did submit an affidavit from his father together with a bank statement in his father's name, and that his father is referred to on the claimant's passport. There is accordingly evidence that the bank statement was submitted by the claimant's father. The Judge was thus satisfied that he submitted sufficient evidence confirming that the funds represented in the bank statement were available to him from his father [19].
11. The Judge stated that for the avoidance of doubt, he had taken into account **SSHD v Rodrigues [2014] EWCA Civ 2**. It was clear from the documents submitted that the claimant was providing some evidence of relationships and that if the secretary of state had doubts, “he (sic) should have exercised his flexibility policy” in order to require additional documents from the claimant. This is not a case where such documents were not known to be in existence.

12. Accordingly, the claimant had satisfied the Judge on the balance of probabilities that he had at the date of application sufficient funds available to meet the maintenance requirements under the rules.
13. The Judge did not go on to consider the decision under Article 8. Nor is there any counter appeal by the claimant in that respect.
14. On 1<sup>st</sup> August 2014, First-tier Tribunal Judge Fisher granted the secretary of state permission to appeal. This was on the basis that the Judge appeared to have ignored the provisions of s.85A of the Nationality, Immigration and Asylum Act 2002 when determining the appeal. Accordingly, it was arguable that he erred by considering the birth certificate which had not been produced until the appeal stage.
15. Mr Bramble on behalf of the secretary of state produced the relevant immigration rules, which both parties accepted applied as at the date of the decision in this case.
16. He submitted that the Judge had misdirected himself in law. That is because Appendix C to the Immigration Rules provides at paragraph 13 that 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 his parents who have provided written consent that the funds may be used by him to study in the UK.
17. Paragraph 13B provides that if the applicant is relying on the provisions of paragraph 13(ii) above, he must provide the original (or notarised copy) of his birth certificate showing the names of his parent(s).
18. The claimant had accepted before the First-tier Tribunal Judge that he had not provided at the time a birth certificate although that was provided with the appeal documents. The Judge relied on this document to find that the claimant had demonstrated that the funds in the bank statement were available to him.
19. It was therefore submitted that the Judge ignored the provisions of paragraphs 13 and 13B of Appendix C and also 'ignored and paid no regard to' the provisions of s.85A of the 2002 Act when relying on post application evidence.
20. Mr Pasha, who represented the claimant before the Upper Tribunal, submitted that the secretary of state had sufficient information on record to prove the status of relationship of the claimant's father at the time of the impugned decision. He submitted that in the circumstances, that "attracted" the applicability of the "flexibility policy".
21. He submitted that the information provided and held by the secretary of state, namely the documents identified by the First-tier Tribunal Judge, was sufficient for

the purpose of the policy and the Home Office “could require further evidence as per this policy” to produce the birth certificate if additional confirmation were needed. The secretary of state failed to follow “the spirit of flexibility policy” and refused the application without exercising her “judicious discretion” which forced the claimant to go to the appeal hearing.

22. He thus sought to uphold the decision of the First-tier Tribunal Judge with regard to the flexibility policy. The decision of the Judge was rational, judicious and “meets the ends of natural justice”.
23. Mr Pasha submitted in the alternative that the matter should be considered under Article 8.
24. Mr Bramble in reply submitted that paragraph 245AA did not assist the claimant. Under the clear wording of that paragraph, the claimant was not entitled to the relief assumed by the First-tier Tribunal Judge to be available.

#### Assessment

25. It is common ground that the claimant failed to produce his birth certificate showing the names of his parents, either at the date of application or the decision.
26. Paragraph 13 of Appendix C to the rules provides that funds are available to the applicant only where the specified documents confirm that the funds are held, and if relying on the provisions in paragraph 13(ii), he must provide an original or notarised copy of his birth certificate showing the names of his parent(s).
27. It is common ground that he did not provide the relevant birth certificate which is a specified document.
28. The Judge paid no regard to the provisions of s.85A of the 2002 Act, prohibiting in this case any reliance on post application evidence.
29. The Judge, however, “took into account” the **Rodrigues** decision. He found that as the appellant was providing some evidence of relationship, the secretary of state should, if she had doubts, have exercised her “flexibility policy” to require additional documents from the claimant. This is ‘...not a case where such documents were not known to be in existence’. In the event, the Judge found that the claimant had submitted relevant documents sufficient for him to prove the relationship.
30. Paragraph 245AA to the rules which applied at the relevant time is headed “documents not submitted with applications.”

31. It states that where part 6A (an application under the points based system) or any appendices referred to in part 6A state that specified documents must be provided, the secretary of state will only consider documents that have been submitted with the application and will only consider documents submitted after the application where they are submitted in accordance with sub paragraph (b).
32. Paragraph 245AA(b) provides that if the applicant has submitted specified documents in which some of the documents in the sequence have been omitted, or a document is in the wrong format, or a document is a copy and not the original document, or where it does not contain all of the specified information, the secretary of state may contact the applicant to request the correct documents.
33. It is expressly stated in paragraph 245AA(c) that documents will not be requested where a specified document has not been submitted (for example an English language certificate is missing).
34. Paragraph 245AA(d) provides that if the applicant has submitted "a specified document" in the wrong format, or which is a copy or which does not contain all the specified information, but the missing information is verifiable from other documents submitted with the application, the website of the organisation which issued the documents or the website of the appropriate regulatory body, the application may be granted exceptionally, provided that the secretary of state is satisfied that the specified documents are genuine and the applicant meets all the other requirements.
35. In order for paragraph 245AA to apply it is required that the applicant must have submitted "specified documents" which contains some problem relating to sequence, format or which is only a copy, or which does not contain all the specified information.
36. Moreover, the application may in certain circumstances be granted exceptionally; however, it is again provided that the applicant must at least have submitted a specified document, albeit in the wrong format or is only a copy, etc.
37. In this case, however, no such specified document, namely the birth certificate, had been submitted. In the circumstances, there was no duty on the secretary of state to contact the claimant or his representatives to request the correct documents.
38. It is also expressly provided at 245AA(c) that documents will not be requested where a specified document has not been submitted. In this case, such document had not been submitted and accordingly the secretary of state was not in terms required to request such document.
39. I accordingly find that for the reasons given, the First-tier Tribunal Judge made a material error of law.

40. The First-tier Tribunal Judge did not go on to consider the position under Article 8, I am satisfied that even if this amounts to an error, it was not material in the circumstances. The appellant's appeal under Article 8 would have been bound to fail.
41. Having found that there was a material error of law, I set aside the decision of the First-tier Tribunal and re-make it, dismissing the claimant's appeal.

**Decision**

**The determination of the First-tier Tribunal involved the making of material errors of law. Having set aside that decision, I re-make it, dismissing the appeal.**

**No anonymity direction made.**

**I set aside the fee award in the amount of £80 made in favour of the claimant**

Signed

Date 29/9/2014

C R Mailer  
Deputy Upper Tribunal Judge