



UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: IA/17420/2013

THE IMMIGRATION ACTS

Heard at: Field House  
On: 21 July 2014  
Prepared: 3 August 2014

Determination Promulgated  
On: 7 August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

MR ADIL AHMAD  
NO ANONIMITY DIRECTION MADE

Appellant

Respondent

Representation

For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer  
For the Respondent: Ms A Jones, counsel (instructed by Dhogal Partners Solicitors)

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 claimant appealed against a decision of the respondent dated 1<sup>st</sup> May 2013 to refuse to vary his leave to remain in the UK as a Tier 1 (Entrepreneur) Migrant. The Secretary of State was not satisfied that the claimant had demonstrated that he had access to £200,000 as required by Appendix A.
3. In a decision promulgated on 28<sup>th</sup> April 2014, the First-tier Tribunal Judge allowed the appeal. The Secretary of State had awarded the claimant no points for attributes:

Appendix A. He supplied a bank letter from Habibi Bank Ltd – HBL- together with a third party declaration showing that he had access to more than £200,000.

4. However, the letter from HBL did not state his name on it or confirm the amount of money available to him as required by the Tier 1 policy guidance.
5. Before the First-tier Tribunal Judge, the claimant asserted that while the letter that he submitted to HBL did not have his name on it, the secretary of state should have sought that information from him prior to making the decision. That information would then have been forthcoming.
6. The Judge however stated that the only matter of concern was that the claimant's name did not appear on the HBL letter.
7. The Judge had regard to paragraph 245AA (d). That provides that if the applicant has submitted a specified document which does not contain all the specified information, but the missing information is verifiable from other documents submitted with the application, the application may be granted exceptionally provided that the Entry Clearance Officer, Immigration Officer or the Secretary of State is satisfied that the specified documents are genuine and the applicant meets all the other requirements. The Secretary of State reserves the right to request the specified original documents.
8. The Judge found that the nature of the omission was one that came within paragraph 245AA(b)(iv), namely that the document did not contain all the specified information. The Judge characterised the “complaint” that owing to the omission of the claimant's name on the HBL letter, it cannot be established on the balance of probabilities that the funds are available to the claimant [11] and [16].
9. The Judge found that none of the material submitted by the claimant was anything other than genuine. All the other requirements of paragraph 41-SD(d) were met. The documents addressed the issue of availability of those funds to the claimant.
10. Accordingly, the Judge was satisfied that there was “an abundance of other material” from which the Secretary of State could have been satisfied on the balance of probabilities that the funds were available to the claimant. That was the only issue “extant” and he found that the claimant met that requirement and that the application should have been allowed “within the parameters of paragraph 245AA (d) of the Rules”. Accordingly, the claimant should have been awarded 75 points pursuant to Appendix A.
11. The Secretary of State sought to appeal against that decision on the basis that the rules require that third party support documents from the bank must both contain the information regarding the claimant as well as confirming the availability of the money to him. These had not been met. Evidential flexibility would not apply to

this case as the bank had not set out that the money was available *to the claimant*. The missing information was thus confirmation from the bank that the money is available to the claimant.

12. On 29<sup>th</sup> May 2014, First-tier Tribunal Judge Foudi granted the Secretary of State permission to appeal on the basis that the only matter of concern raised by the Judge had been the absence of the claimant's name on the letter, whereas the bank had not confirmed that the funds were available to the claimant. The Judge had not dealt with that issue at all in the determination.
13. At the hearing on 21<sup>st</sup> July 2014, Mr Duffy relied on the grounds of appeal. He submitted that the Judge wrongly found that the application could be granted exceptionally pursuant to paragraph 245AA. The whole point is that the bank must confirm that the sponsor intends to make the money available to the claimant. In this case, it cannot be gleaned from other documents.
14. He accepted, however, that in the circumstances the Secretary of State should have contacted the claimant in writing to request the correct documents as the bank letter did not contain all the specified information. To that extent, the decision had not been in accordance with the law, and the appeal should have been upheld on that basis.
15. On behalf of the claimant, Ms Jones submitted that the error of law has to be material. If it would not make a difference to the outcome, it would not be material.
16. In any event she contended that the Judge had in fact made no error. She referred to three documents which provided the relevant information required by the rules which could be "gleaned" from this documentation: Those documents are contained at pages 38, 39 and 40 of the appellant's bundle.
17. The letter from the bank dated 3<sup>rd</sup> December 2012 confirms that Mrs Noshaba Mudassar (the third party sponsor) is a customer of the bank, maintaining an account, the numbers of which have been identified. In addition, the relevant balance at that date is also set out.
18. The letter goes on to state that the amount is available to Mrs Noshaba Mudassar and is freely transferable in the UK and convertible into pounds sterling. Whilst it did not in terms state that the money is available to the appellant in that letter, she submitted that regard must also be had to the additional documentation which accompanied the application and which provided the necessary link.
19. In particular, she had regard to a letter from Mrs Noshaba Mudassar in which her name, address and passport number are set out. In that letter, she expressly refers to the application of the claimant including his address and date of birth, and

passport number. She notes that he has made an application for entrepreneurial status in the UK.

20. She further states that she is a family friend of the claimant. She is willing to share this information with the UKBA. She states that she has £200,000 which she will make available to the claimant or the business "they run" in the UK. He has full access to use and dispose of the said amount of money freely in the UK.
21. Ms Jones also referred to page 40, containing the full details of the third party sponsor, namely Mrs Noshaba Mudassar, including her address and passport/ID numbers.
22. The document confirms that she is the third party in the claimant's application and that she has signed an enclosed letter making funds of £200,000 available to the claimant. There is also confirmation by a notary public that the letter signed by Mrs Mudassar as third party, is "authentic and valid."
23. Ms Jones referred to the evidence produced regarding the third party's bank account at page 37, held with HBL. The account number is identified as well as the third party's name and address which corresponds to the name and address contained in the documents at pages 38, 39 and 40. The account number on page 37, the current account, corresponds with the bank letter, the third party statement and the details contained in the letter from the notary public.
24. Accordingly, even though the Judge did not deal in terms with the issue raised by the secretary of state, namely, that the bank had not confirmed that the funds were available to the appellant, that did not constitute a material error as the missing information is verifiable from the other documents submitted with the application.

### **Assessment**

25. The issue raised by the secretary of state is that the information missing is the confirmation from the bank that the money is available to the claimant. It is contended that the Judge failed to set out the evidence allowing him to conclude that the information was contained in the other evidence.
26. It is contended that the Judge failed to give any reasons or at least adequate reasons where the information lies in the other evidence that shows that the bank acknowledges that the money is available to the claimant and that accordingly there is a mandatory piece of evidence missing.
27. Mr Duffy on behalf of the Secretary of State stated at the outset that the decision of the secretary of state was not in accordance with the law as the missing information should have been requested under paragraph 245AA of the rules. The claimant should have been given seven working days from the date of the request to provide

the correct documents. Accordingly, the appeal should have been allowed albeit on a different basis.

28. I have had regard to Ms Jones' submission that the application in any event could have been granted exceptionally under that paragraph. That is upon the basis that this claimant has submitted a specified document which does not contain all the specified information, but the missing information is verifiable from other documents submitted with the application.
29. I have set out the specified information which was missing from the bank statement. I find that the information was in the circumstances verifiable from other documents submitted with the application.
30. I have had regard to the statement from the HBL at page 38 in which the bank states that the relevant amount is available to Mrs Mudassar, and which is also freely transferable in the UK. The account number as well as the amount contained in her HBL account at Gulberg Main Market Branch is identified not only in the letter but also in the actual bank statement produced and which relates to Mrs Mudassar; this is moreover signed by the Habib Bank Ltd, Gulberg Main Market Branch.
31. In addition, there is the third party letter from Mrs Mudassar herself in which her details relating to her identity and address are set out and which correspond with all the other documents; the letter states that the money concerned is available to the claimant, whose address is set out. That has been signed in front of a notary public. The third party statement also refers to the enclosed letter which Mrs Mudassar has signed as a third party in the claimant's application for entrepreneurial status in the UK.
32. I am accordingly satisfied that although there was an error made by the Judge in omitting to deal with the secretary of state's contention that there was missing information constituting confirmation from the bank that the money would be available to the claimant, this turns out not to have been material as the other documents produced clearly demonstrate that the missing information from the bank letter was verifiable from those other documents submitted as part of the application.

### **Decision**

**The decision of the First-tier Tribunal Judge did not involve the making of a material error on a point of law. It shall accordingly stand.**

**No anonymity direction made**

Signed: Deputy Upper Tribunal Judge Mailer: 3/8/2014