



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/37270/2013

THE IMMIGRATION ACTS

Heard at Field House

On 14th April 2014

Determination

Promulgated

On 14th May 2014

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MR TARIQ NASEER

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Bagral, (Counsel)

For the Respondent: Mr N Bramble

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan born on 13th March 1967.
2. On 25th May 2013 he made an application for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant. His application was

refused by the respondent on 23rd August 2013, the reason for that refusal is clearly stated in the decision as follows:-

“Bank statements must be original statements or internet and ad hoc printouts which must contain all the personal information (bank name and logo/account holder’s name/account number/date of statement/amount of money available) and be stamped and signed by the bank as described under paragraph 1B of Appendix C of the Immigration Rules. As the bank statements you submitted in support of this application do not show a date stamp countersigned by the bank, these documents are not acceptable”.

3. The appellant sought to appeal against that decision which appeal was determined upon the papers by First-tier Tribunal Judge McDade. It was noted by the Judge that the appellant sought to challenge the decision on the basis that the evidential flexibility policy of the respondent had not been followed.
4. The Judge held that the evidential flexibility policy did not apply and that plainly the documents were defective on their face. In those circumstances the appeal was dismissed.
5. Grounds of appeal were submitted against that decision on the basis that it was not a requirement of the Rules that the bank accounts be signed and secondly that even if that had been the case the respondent ought to have drawn the attention of the appellant to that shortcoming under the terms of the evidential flexibility policy.
6. In any event the discretion could have been exercised in favour of the appellant.
7. Leave to appeal was granted on the basis that there would seem to be no requirement for bank statements to be countersigned under paragraph 1B of Appendix C and in any event paragraph 245AA of the Immigration Rules was in force from September 2012, documents in the wrong format were subject to request by UKBA paragraph 245AA(b)(ii)(iii) of the Rules irrespective of the outcome in **Rodriguez [2014] EWCA Civ 2**.
8. Thus the matter comes before me in pursuance of that grant of leave.
9. I was provided with a copy of Appendix C paragraph 1B which was then in operation.
10. Appendix C paragraph 1B(iv) provides as follows:-

Statements must be either:

- (1) printed on the bank’s or building society’s letterhead,

- (2) electronic bank or building society statements, accompanied by a supporting letter from the bank or building society, on company headed paper, confirming the statement provided is authentic, or
 - (3) electronic bank or building society statements, bearing the official stamp of a bank or building society on every page.
11. Mr Bramble who represents the respondents most fairly acknowledged that in the Rules as at the material time there was no requirement for the stamp of the bank to be countersigned by the bank. Thus the caseworker who had drafted the decision of 23rd August was in error.
 12. He also submitted to me the details of the evidential flexibility policy which is version 2 as valid from 20th May 2013. In particular he drew my attention to the Section which deals with the documents which it may be appropriate for the caseworker to request for each Tier.
 13. In relation to Tier 4 the following is set out:-

Maintenance:

Missing bank statements from a series.

Missing information from bank letters.

Evidence that is copied instead of an original.

Bank statements not in the desired format.
 14. He most properly agreed that under the terms of the policy the appellant could reasonably have expected the caseworker to have raised concerns as to the format of the documents as submitted.
 15. Clearly in requiring a signature the caseworker who drafted the decision was in error. That error was replicated by the Judge. Accordingly the evidence presented and the findings made upon it are unsafe. I have no hesitation therefore in setting aside the decision to be remade.
 16. Mr Bramble raised the question as to the nature of the bank statements that had been submitted and which can be seen at Appendix E of the respondent's bundle of documents. These certainly seemed to have the appearance of being printed from the internet. They bear the bank stamp that are clearly identifiable as statements from the Lloyds TSB Bank. It was not however immediately apparent from the format of the statement as to whether that was an online account or simply an ordinary account which could be accessed online.
 17. The appellant was asked about the account and he seemed to be unclear as to its precise nature. He said that he did access the account online but

also he received bank statements on a regular basis in relation to that account. He presented to me the bank statements printed on the bank's letterhead for the same period as the bank statements at Annex E indeed is reflective of that which is recorded at Annex E.

18. Mr Bramble agreed that it was not entirely clear what was the meaning of online account it was an account purely created online and had no physicality of paper returns about it.
19. It seems to me however I so find that it is not necessary to pursue that line of inquiry in all the circumstances. As I have indicated I was handed the statement for the relevant period printed on the bank's letterhead, as well as the electronic version with the bank stamp upon it.
20. In those circumstances I do have little hesitation in finding that the documentation that the appellant now produces is such as to satisfy the requirements of Appendix C, paragraph 1B. It is significant that no issue was taken as to the nature of the bank statement but rather that it had not been signed.
21. I find therefore that the bank statement which was submitted and set out in Annex E was such as to satisfy the requirements or in the alternative that the headed bank statement was such as to satisfy the requirements of the Rules. It was the only matter raised by the respondent in the refusal letter. Indeed I find that had the evidential flexibility policy been implemented as it should that a request to the appellant would have elicited a positive and accurate document itself.
22. In all the circumstances therefore the appeal is allowed under the Immigration Rules. Article 8 of the ECHR is allowed in conjunction with that appeal as it would be clearly disproportionate to remove someone who had a lawful right to remain.

Signed

Date

Upper Tribunal Judge King TD