



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/40361/2013
IA/40486/2013

THE IMMIGRATION ACTS

Heard at Field House, London
On 4 November 2014

Determination Promulgated
On 16 December 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**BARANIDARAN KANNAN
SANDIYA BALASUBRAMANIAN**

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Eaton, instructed by Turpin & Miller Solicitors

For the Respondent: Mr T Melvin, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The first appellant, a national of India, appealed to the First-tier Tribunal against the decision of the Secretary of State to refuse his application for leave to remain as a Tier 4 (General) Student Migrant under the Points Based System and to remove him from the UK. The second appellant, the first appellant's spouse, appealed against the refusal of her application for

leave to remain as a dependant. First-tier Tribunal Judge Britton dismissed the appeals and the appellants now appeal with permission to this Tribunal.

2. The background to this appeal is that on 6 December 2012 the first appellant applied for leave to remain to study at Thames College Berkshire. According to his application form he submitted the CAS form and a bank statement. The respondent wrote to the appellant on 24 June 2013 to inform him that on 11 June 2013 the UKBA had revoked the licence of Thames College Berkshire and gave him a 60 day period in which to withdraw the application and submit a fresh application or to obtain a new CAS for a course at a licensed college and to submit an application to vary the grounds of appeal of his original application. However the college's licence was reinstated on 9 July 2013. The appellant submitted a further bank statement to the respondent dated 3 August 2013.
3. The respondent refused the application on 17 September 2013 on the basis that the appellant had not achieved the required 10 points for maintenance. According to the Reasons for Refusal letter the appellant was required to show that he had the required maintenance amount of £10,800 plus any outstanding course fees for the first year of his course for a period of 28 days. The respondent referred to the bank statement dated 3 August 2013 which showed funds of 330,747 Indian Rupees (£3,347.85) and concluded that the appellant had not demonstrated that he had the required level of funds over the specified 28 day period.
4. The First-tier Tribunal Judge decided that when the appellant first submitted his application he produced evidence of £3,347.85 in his Indian bank account and that the letter he produced from his father-in-law, dated 2 October 2013, post dated the date of refusal and could not therefore be considered.
5. The appellant applied for permission to appeal to the Upper Tribunal. This application was refused by the First-tier Tribunal and, on renewal, by the Upper Tribunal. However the decision of the Upper Tribunal to refuse permission was set aside and permission to appeal was granted by Upper Tribunal Judge Dawson on 2 October 2014.
6. The grounds of appeal contend that the appellant submitted bank statements in December 2012 which demonstrated that he held the equivalent of £10,000 for the required 28 day period prior to that application. It was submitted that the respondent returned those documents to the appellant in June 2013 when he was advised that the sponsor's licence had been withdrawn. It is contended that the Judge erred in failing to consider the evidence as to the correct period and for failing to ask the appellant, who was unrepresented before the First-tier Tribunal Judge because his representatives had been intervened, for the documents submitted with the December 2012 application.
7. In granting permission to appeal Upper Tribunal Judge Dawson noted that it was not clear what evidence was before the First-tier Tribunal or referred

to at the hearing. The parties were directed to file with the Tribunal any documentary evidence upon which reliance is placed. The appellant's solicitors submitted a bundle of documents including bank statements from December 2012 which were said to have been returned by the respondent to the appellant in June 2013.

Error of law

8. I accept on the basis of the chronology set out above that the respondent, and then the First-tier Tribunal Judge, were obliged to consider the circumstances as at the date of the application which, according to the Reasons for Refusal letter, was 6 December 2012. Mr Melvin accepted that the appellant had to demonstrate that he met the requirements at the date of the original application.
9. According to paragraph 1A of Appendix C of the Immigration Rules the appellant was required to demonstrate that he had the required funds for a consecutive period of 28 days at the date of the application. Although the sponsor's licence was withdrawn it was reinstated within a short period of time and the appellant did not obtain or submit a new CAS.
10. The respondent clearly erred in the Reasons for Refusal letter in considering the bank statement of 3 August 2013. The First-tier Tribunal Judge did not specifically identify this issue. However he says at paragraph 13 of the determination that when the appellant submitted his application "he produced evidence of £3,347.85 in his Indian Bank account, which does not demonstrate the [required] level of funds...". This appears to refer to the August 2013 bank statement. The First-tier Tribunal Judge does not refer to any other financial evidence apart from a letter dated 2 October 2013 from the appellant's father-in-law. It is not therefore clear that any further evidence was before him.
11. I am satisfied that the financial evidence before the First-tier Tribunal Judge related to August 2013. The appellant was unrepresented at the hearing and it seems from the Reasons for Refusal letter which referred to the August 2013 statement and the notice of appeal, which included further financial documents dating from October 2013, that the appellant and those advising him failed to appreciate that the relevant period for the purposes of this application was the period of 28 days prior to the application on 6 December 2012. Whilst the Judge was clearly not aware that it was asserted that such evidence existed, he still erred in considering the August 2013 bank statement as it related to the wrong period.
12. The question is whether this is a material error. Had the Judge referred to the correct period and said that the appellant had submitted no evidence to cover it then his error may not have been material. However the appellant was unrepresented and had the Judge raised the issue as to the correct period to be considered I cannot be certain that the appellant would not have been able to deal with it or to have produced some evidence or to have sought an adjournment to obtain any evidence relating to that period. In

these circumstances I conclude that the error was material. I therefore set aside the decision of the First-tier Tribunal Judge and remake it.

Remaking the decision

13. In their bundle dated 13 October 2014 the appellant's solicitors submitted a letter from the Punjab National bank dated 1 December 2012, a print out from the Punjab National bank dated 1 December 2012 and a bank statement dated 1 December 2012. It is asserted that these documents were sent to the respondent with the original application and returned in June 2013. Mr Melvin submitted that it is not clear if or when these documents were put before the respondent. Mr Eaton submitted that they are specified in the appeal form however the notices of appeal list the documents included and these all date from October 2013. Mr Melvin submitted that there is no evidence that the documents included in the October 2014 bundle were before the respondent or the First-tier Tribunal Judge. He submitted that there is nothing to show that these documents have been verified. He further submitted that any contention that the appellant was wrongly advised was not an issue for the Tribunal.
14. Mr Eaton submitted that the only issue was whether the December 2012 documents were submitted with the December 2012 application. He submitted that it is clear from the application form that bank statements were submitted and that it is reasonable to conclude that the bank documents dated 1 December 2012 were the documents referred to. I accept that the application form submitted in December 2012 states that a bank statement was included. However no copy is with the application form and no further details were provided on the form.
15. Mr Eaton submitted that it is reasonable to infer that the bank documents provided in the bundle of October 2014 are those referred to in the application form. This may be so but I have reservations about the documents in that bundle. Firstly they are copies and not originals and secondly the copies before me are mis-sized as a result of which some of the details are not visible. In these circumstances I am unable with confidence to remake the decision on the basis of the evidence before me. I do not consider that a First-tier Tribunal Judge would be any better placed than me to remake the decision without better evidence as to the financial circumstances of the appellant at the date of the application and as to what was submitted to the respondent. I note Mr Melvin's submission that there is no evidence that the bank statements submitted have been considered or verified by the respondent. I note that the respondent never considered whatever documents were submitted with the December 2012 application. I also take account of the fact that the appellant's former representatives have been intervened and that the best evidence as to what was submitted in December 2012 may well be with the respondent. I also take account of the fact that the respondent did not apply the Immigration Rules properly in the decision dated 17 September 2013 in taking account of evidence relating to 2013 rather than December 2012. I am satisfied that the proper approach

in the circumstances of this case is to return the application to the respondent to make a decision based on the circumstances at the date of the application in accordance with the Immigration Rules.

Conclusion:

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

I set the decision aside and remake it by allowing it only to the extent that the application remains outstanding before the Secretary of State.

Signed Date: 15 December 2014

A Grimes
Deputy Judge of the Upper Tribunal