



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/48413/2013

THE IMMIGRATION ACTS

Heard at Field House
On 7 April 2014

Determination Promulgated
On 10 April 2014

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

MR IDREES KHAN
(No Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss M Kumar of counsel instructed by Legend solicitors
For the Respondent: Ms A Holmes a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan who was born on 23 February 1989. He has been given permission to appeal the determination of First-Tier Tribunal Judge McGavin ("the FTTJ") who dismissed his appeal against the respondent's decision of 16 September 2013 to refuse him leave to remain in the UK as a Tier 4 (General) Student Migrant under the Points-based System and for a Biometric Residence Permit.

2. The appellant was granted leave to enter the UK as a Tier 4 student under the Points-based System for a period from 31 January 2011 until 26 February 2013. On 22 February 2013 he applied for further leave in the same capacity in order to attend Park Royal College in London. However, the sponsor's licence for that College had been suspended and the respondent notified the appellant of this by a letter dated 16 June 2013. As a result he no longer had a valid Confirmation of Acceptance for Studies (CAS). In that letter the respondent informed him that consideration of his application would be suspended for 60 days to give him the opportunity to take one of a number of possible courses of action; one possibility being to obtain a new sponsor and another CAS.
3. The appellant obtained a place at the London Empire Academy in Chiswick and from them a CAS dated 5 August 2013. This was submitted to the respondent and he was awarded the required points under this category. However, the respondent refused the application on the basis that the appellant had not shown that he was entitled to the points for Maintenance (Funds). He had not produced the required documents to show that he was in possession of £7200 for a consecutive 28 day period. Indeed, he had produced no evidence of any funds available to him.
4. The appellant appealed to the First-Tier Tribunal asking that his appeal be determined on the papers which is what the FTTJ did on 29 January 2013. In advance of the hearing the appellant submitted two bundles of documents.
5. The FTTJ found that the appellant had provided no evidence to show that he submitted maintenance documents to the respondent, what they were or when they were submitted. The two documents in the appeal bundle both dated 22 July 2013 from the Lahore branch of Bank Alfalah Ltd could not have been submitted with the application of 22 February 2013. The respondent's flexibility policy did not assist the appellant where the appellant claimed to have supplied the necessary documentary evidence of maintenance funds but had in fact supplied no evidence at all. The FTTJ dismissed the appeal under the Immigration Rules and on human rights grounds. In the light of the amendments contained in s51 of the Crime and Courts Act 2013 the FTTJ upheld the s47 removal decision.
6. The appellant applied for and was granted permission to appeal to the Upper Tribunal by a judge in the First-Tier Tribunal. The grounds submit that the FTTJ made an error of fact amounting to an error of law. Following the respondent's letter of 16 June 2013 the appellant alleged that he had not only submitted a new CAS from a recognised College but had also submitted the bank letter and bank statement dated 22 July 2013 which, although they would have been too late for the original application submitted on 22 February 2013, were of the right date and covered the appropriate period for the resubmitted application.
7. I have a Rule 24 response from the respondent. Unfortunately, either or both of the appellant's and/or the respondent's representatives lacked some of the

documents on the Tribunal file. I arranged for copies to be provided. I was given copies of some documents from the respondent's file. Miss Kumar did not object.

8. Ms Holmes conceded that the FTTJ made an error of fact amounting to an error of law, as alleged in the grounds of appeal, and I so find. The FTTJ should have considered the bank letter and bank statement dated 22 July 2013 in the light of the renewed application made as a result of what was said in the respondent's letter of 16 June 2013, whether they had in fact been submitted and if so the effect on the appellant's application. I conclude that as a result the decision should be set aside and remade. Ms Holmes also conceded on behalf of the respondent that if the originals of the letter from the Lahore branch of Bank Alfalah Ltd dated 22 July 2013 and the accompanying bank statement covering the period from 18 December 2012 to 15 July 2013 ("the bank letter and statement") had been submitted to the respondent when the appellant claimed he would have established that he met the Maintenance (Funds) requirements of the Immigration Rules and have been entitled to the required points. I note, although I do not need to go behind the concession made by Ms Holmes, that at the current rate of conversion of 162 Pakistan rupees to the pound sterling the amount that the appellant was required to show (£7200) equates to 1,166,400 Pakistan rupees and that the balance on the bank statement was at all times well in excess of this figure.
9. I indicated that I was minded to remake the decision without an adjournment. There was no objection from either representative.
10. In the circumstances this appeal turns on the disputed question of whether the appellant submitted the original bank letter and statement to the respondent. He claimed to have done so by posting them on 13 August 2013 together with the new CAS. The appellant claims that he posted these documents in person and obtained the receipt from the Post Office which appears in his bundle. The respondent accepts that the CAS was sent and received but says that the bank letter and statement were not. The respondent relies on a case record sheet dated 16 September 2013.
11. Miss Kumar called the appellant to give evidence. I asked him some questions and he was cross examined. His evidence is set out in my record of proceedings.
12. I heard submissions from both representatives. Ms Holmes submitted that if the appellant had posted the documents as he claimed he would have known where the Post Office was. She invited me to find that he had not provided satisfactory evidence to establish that he had posted them.
13. Miss Kumar submitted that the appellant had established that he had posted the documents. It was difficult to understand why, if the respondent had not received the original bank letter and statement the letter dated 17 September 2013 inviting him to go and have his biometrics taken would have been

issued. In response to my invitation Miss Kumar said that she did not wish to make any submissions in relation to the respondent's case record sheet.

14. I reserved my determination.
15. I find that the appellant did supply a letter and bank statement from the Lahore branch of Bank Alfalah Ltd both dated 20 February 2013 with his original application dated 22 February 2013. During the course of the hearing Ms Holmes found the originals on the respondent's file and produced them.
16. The respondent accepts and I find that the CAS dated 5 August 2013 from London Empire Academy was sent to and received by the respondent. The appellant alleges that he posted both this CAS and the original bank letter and statement to the respondent in an envelope without a covering letter on 13 August 2013. He has produced a copy receipt from the Post Office as evidence of this.
17. The Post Office receipt was issued at 199-205 Haverstock Hill London NW3 4QG on 13 August 2013 at 22.28 and fee of £6.95 was paid. The destination address is recorded as PO Box 3468 S38WA. I have no evidence as to whether there is such an address or if so whether it is a correct address for the respondent. In his evidence the appellant said that he posted the application submitted in February 2013 with the letter and bank statement from the Lahore branch of Bank Alfalah Ltd dated 20 February 2013. This was his bank. He posted the originals of the later bank statement and letter with the CAS form in an envelope without a covering letter to the Home Office from a Post Office in East Ham not far from where he lived. He was shown the receipt issued by the Post Office and said that this was the receipt given to him at the post office in East Ham. In cross examination the appellant repeated that he had posted these documents from a Post Office in East Ham. When it was pointed out to him that the receipt was issued by a Post Office in Haverstock Hill he changed his mind and said that the first application had been sent from a Post Office in East Ham and the later submission, in August 2013, had been sent from Haverstock Hill. He had gone into the Post Office, not just put the envelope in the post box outside. When asked the amount of the fee he looked at the receipt and said £6.35.
18. From the respondent I have the case record sheet which states that the appellant "has not sent in bank statements". Looking at all the evidence in the round I find that the appellant is not credible. I do not believe that that he sent the bank letter and statement to the respondent on 13 August 2013 or at all. His oral evidence was evasive. On three occasions he stated that the envelope had been posted from a Post Office in East Ham. When the inconsistency between this evidence and the address of the Post Office stated on the receipt was pointed out to him he changed his evidence to accommodate the inconsistency. I accept that the new CAS was sent to and received by the respondent but not but it was posted when the appellant claimed or that it was accompanied by the bank letter and statement. I do not consider that the

letter dated 17 September 2013 inviting the appellant to go to a participating place to have his biometrics (scanned fingerprints and photographs) taken provides any indication that the respondent did receive the bank letter and statement. There is nothing in this letter to indicate otherwise or that the respondent was minded to grant the appellant's application.

19. I have not been asked to make an anonymity direction and can see no good reason to do so.
20. I find that the appellant has failed to establish that on his renewed application he supplied the required evidence of Maintenance (Funds) or indeed any evidence. He has not met the requirements of the Immigration Rules. The appellant has not contested the FTTJ's decisions to dismiss the appeal on human rights grounds or to uphold the s47 removal decision, which stand. Having found that the FTTJ erred in law and set aside her decision I remake the decision by dismissing the appellant's appeal.

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Signed
Upper Tribunal Judge Moulden

Date 8 April 2014