



IAC-AH-SAR-V1

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

Appeal Number: IA/14483/2014

THE IMMIGRATION ACTS

Heard at Bradford

On 17 June 2015

**Decision &
Promulgated**

On 15 July 2015

Reasons

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**MD KAMAL UDDIN KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Islam, London Law Associates

For the Respondent: Mrs Pettersen, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Md Kamal Uddin Khan, was born on 3 November 1989 and is a male citizen of Bangladesh. He appealed against the decision of the respondent dated 14 June 2014 refusing him leave to remain as a Tier 1 (Entrepreneur) Migrant. The First-tier Tribunal (Judge Carroll, determining the appeal on the papers) in a decision dated 9 December 2014 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant made his application for leave to remain as a Tier 1 (Entrepreneur) Migrant in September 2012. It was refused on 4 March 2013 and the appellant had appealed that decision to the First-tier Tribunal (Judge Boyes) who heard the appeal at Hatton Cross on 25 July 2013. In a determination which was promulgated on 22 August 2013, Judge Boyes considered that the respondent's "evidential flexibility policy" had not been considered at all by her in this instance either in respect of the appellant or his partner (his co-appellant in that appeal). The judge allowed the appeal on the basis that the immigration decisions were not in accordance with the law and on the limited basis that they should remain outstanding before the respondent pending their lawful consideration. Accordingly, on 14 March 2014, the respondent wrote to the appellant to tell him that the application had been reconsidered. The appellant had been awarded 0 points under Appendix A (Attributes) as regards access to funds. The letter noted that the appellant had,

"... in your appeal bundle ... supplied a Barclays Bank letter dated 17 July 2013 confirming the third party funds available to you. However, the bank letter is not dated within three months of the application date of 8 September 2012 and does not include the account number ..."
3. Judge Carroll recorded that the appellant's legal representatives had submitted a fax with his notice of appeal and had also indicated in that notice that other "documents will follow in due course". The judge noted there were "no further documents on the court file". The judge found that the letter from Barclays Bank of 17 July 2013 "is neither dated within three months of the application date of 8 September 2012 and nowhere does it include the relevant account number". The judge found that the appellant could not satisfy paragraph 245DD(b) of HC 395 (as amended).
4. The grounds of appeal assert that,

"... by a determination dated 22 August 2013, Judge Boyes clearlymitted the application date effectively and thus the application date should have been calculated from the date of submitting the bank letter (i.e. from 17 July 2013 and not from 8 September 2012) and thus no question about the three months' limitation should arise or apply in this regard."

That is an assertion without any support from the decision of Judge Boyes himself. Whilst the judge noted in his determination that "the respondent did not give the appellants the opportunity to provide the missing documentation before the application was refused" he did not indicate that the provision requiring the evidence to be submitted within three months of the original application date (8 September 2012) was to be ignored or overridden. He simply indicated that the Secretary of State should consider all the evidence produced by the appellant and reject it or accept it, giving reasons accordingly. Even if the appellant is right and the respondent (in the letter of 14 March 2014) had been wrong to reject the letter from Barclays Bank of 17 July 2013 on the basis that it had not been written before 8 September 2012, the respondent was still entitled to reject the evidence on the basis that it was a letter from the bank that did not include the account number of the appellant. Mr Islam, in his

submissions, sought to rely upon *Khatel* [2013] UKUT 44 (IAC) as authority for the proposition that the appellant's application was "continuing" until it had been decided. Given what I have said above, I am not sure of the relevance of that submission but, in any event, Mr Islam should be aware that *Khatel* was reversed by the Court of Appeal in *Raju* [2013] EWCA Civ 754.

5. Mr Islam also submitted that the appellant's "team mate" or business partner Mr Golam Rabbi had also submitted a separate appeal on similar grounds which had been allowed by the First-tier Tribunal. However, neither the First-tier Tribunal nor the Upper Tribunal are in any way bound by unreported decisions made by different judges of the First-tier Tribunal and involving different appellants.
6. Finally, the grounds of appeal invoke the concept of "fairness". Essentially, this is nothing more than a re-statement of the other grounds of appeal together with a general disagreement with the findings of the First-tier Tribunal Judge. Neither this nor the other grounds pleaded have any merit. The appellant still seeks to rely upon the Barclays Bank letter which, as I have noted above, is seriously deficient in not bearing an account number and was correctly rejected by the respondent for that reason even if (which I do not accept) the respondent was wrong to reject it for failing to pre-date the original application. Accordingly, I can identify no error of law in the decision of Judge Carroll either pleaded in the grounds of appeal or at all. This appeal is dismissed.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 10 July 2015

Upper Tribunal Judge Clive Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 10 July 2015

Upper Tribunal Judge Clive Lane