



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
IA/17103/2014**

APPEAL NUMBER:

THE IMMIGRATION ACTS

Heard at: Field House

**Decision and Reasons
Promulgated**

On: 15 January 2015

On: 29 January 2015

Deputy Upper Tribunal Judge Mailer

Between

**MR TALAL AHMAD
NO ANONYMITY DIRECTION MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

**For the Appellant: Mr C G Talacchi, counsel (instructed by Farani Javid
Taylor Solicitors LLP)**

For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

DECISION AND REASONS

- 1.** The appellant appeals with permission against the decision of First-tier Tribunal Judge Obhi who dismissed his appeal against the decision of the respondent dated 18 March 2013 refusing his application for further leave to remain as a Tier 1 (Entrepreneur) Migrant.

- 2.** Although the appellant provided a declaration from a third party in relation to access to the required funds, he had not provided a declaration from a legal representative that met the requirements. Nor was the letter from NAFA Bank of Pakistan acceptable as it did not match the requirements of the rules requiring each letter to contain the information set out. The Bank did not state the appellant's name, the amount of funds available to him or any contact details for the third party. The bank statements from the third party's bank were not acceptable as bank statements are only acceptable evidence for the appellant's personal funds.
- 3.** Nor did he provide any of the documents confirming his business activity and that he was training.
- 4.** He was thus not awarded points in accordance with Appendix A and his application pursuant to paragraph 245DD of the Immigration Rules was accordingly dismissed.
- 5.** Judge Obhi found that the appropriate date for the submission of documents pursuant to paragraph 41-SD of the rules was the date of the application. The appellant claimed that when he submitted his application he requested that it should not be considered until he had provided further documents. He then sought to provide them in a piecemeal fashion, some as late as June 2014. He claimed not to have received the respondent's decision dated 18 March 2013 and it was only received once his representatives "chased the Home Office" for a decision.
- 6.** In that regard Judge Obhi found that it seemed strange that important letters kept going astray on the one hand, whilst the appellant continued to receive other correspondence. Even if it was accepted that he did not receive the decision letter, that does not assist him as the rules require him to provide information at the date of application. The documents were not there at the time and he had sent a letter stating that he would add additional documents.
- 7.** The appellant in fact accepted in his oral evidence that some of the documents were sent not until two or three months after the application was submitted. Mr Talacchi informed me that the bank letters referred to were sent on 7 June 2014. The declaration from the legal representative was finally sent on 11 March 2014.
- 8.** Mr Talacchi dutifully informed me that the Upper Tribunal dismissed the appeals of Mr Rashid Wasif and Mr Muhammad Waqas (appeal numbers IA/437001/2013 and IA/46681/2013). In fact the appellant's solicitors had requested that his, Mr Ahmad's appeal, be grouped with their appeals. It was contended that all the appeals raise the same common question of law and fact. All the appellants applied for leave to remain as Tier 1 (Entrepreneur) Migrants. All had submitted evidence in support of their

application before the decisions were taken and accordingly questions of admissibility of that evidence was at the forefront of the hearings.

9. Mr Talacchi submitted that authorities such as Nasim and Others (Raju; Reasons not to follow?) Pakistan [2013] UKUT 610 (IAC) accepted that evidence was capable of being submitted until the date of decision.
10. In addition, he relied on the second ground of appeal, namely that when considering the Article 8 claim, the Judge did not follow the established jurisprudence by making an explicit finding under the rules “or the appellant's free standing Article 8” application. The Judge erred in law by not giving consideration to his Article 8 rights.
11. He pointed out that at paragraph 19 of the determination, Judge Obhi in fact noted that he was asked to allow the appeal under Article 8. He stated that the respondent had not issued removal directions. However, the respondent had in fact issued s.47 removal directions under the Immigration, Asylum and Nationality Act 2006.
12. When stating that the appellant could submit a fresh application if he believed he met the requirements under the rules, Judge Obhi found [19] that the appellant had been in the UK for eight years. The purpose for which he was given leave to enter was specific and time limited. He knew when he came to the UK that any private life he has built up was in that knowledge. He also applied the provisions of the Immigration Act 2014 (paragraph 117B) when considering the Human Rights claim. He noted that paragraph 117B(5) provided that little weight should be placed on the private life established by a person at the time when his immigration status was precarious.
13. Mr Nath submitted that the Judge had directed himself appropriately. There were no material errors of law. The appellant only made his application under the Tier 1 (Entrepreneur) Migrant route some ten days prior to the expiry of his Tier 1 (Post Study) Migrant leave.

Assessment

14. The relevant rules in force at the date of the appellant's application contained in Appendix A, Table 4, Part A, paragraph 41, provide that an applicant will only be considered to have had access to funds if the specified documents in paragraph 41-SD are provided.
15. The specified documents in paragraph 41-SD are provided to show that the applicant has permission to use the money to invest in the business in the UK. One of the specified documents to be provided was a letter from the financial institution holding the funds, confirming the amount of money available to the applicant. Each letter must have been produced within the three months immediately before the date of the application (paragraph 41-SD (a)(i)(4)). There is no suggestion that the appellant complied with

that requirement. That provision is mandatory. In any event the respondent had decided the applications at the time the bank letters were eventually submitted.

- 16.** The appellant had been in the UK for a lengthy period of time. He has made successive applications for leave to remain since he was granted leave to enter on 30 March 2006 as a student. He made an application on 15 February 2011 for leave to remain as a Tier 1 (Post Study) Migrant, which was valid until 15 February 2013. He was aware that the rules provided strict conditions which had to be met.
- 17.** The decision in Nasim, supra, does not assist the appellant. The relevant immigration rules and the associated Appendices had been published in advance of the making of the appellant's application. The prescribed documents in the correct form had to be lodged before the expiry of his existing leave to remain. The specific conditions relating to the bank letter including the date by which it had to be produced had not been complied with. Whether or not there may have been proper compliance within paragraph 41-SD after the date of decision did not avail the appellant. The appropriate evidence was simply not before the respondent at the relevant date. Accordingly, the appellant did not comply with the mandatory requirements under the rules.
- 18.** It is also contended that the Judge wrongly found that the respondent had not issued removal directions. His decision regarding Article 8 was asserted to be flawed as he did not follow established jurisprudence by making an explicit finding under the rules or the appellant's free standing Article 8 claim.
- 19.** In that regard, the Judge in fact noted that the appellant had been here for eight years. He had known that his leave to enter was specific and time limited. Any private life that he built up was in the knowledge that it was limited.
- 20.** Judge Obhi properly applied section 117B(5) of the 2002 Act, concluding that little weight should be placed on private life established by the appellant at a time when his immigration status was precarious.
- 21.** I have had regard to paragraph 8 of the appellant's witness statement before the First-tier Tribunal. His Article 8 claim was set out in two short sentences: He had been resident here for eight years. He had abided by all laws. Throughout his stay, he has adapted and integrated into the British society gradually, and made strong connections with the life and community here.
- 22.** However, apart from those assertions, no evidence was adduced regarding any relationship, unique or otherwise, that he formed during the course of his stay in the UK. He has attained a Bachelors and Masters degree whilst here.

- 23.** The grounds of appeal before the First-tier tribunal were generic. It is simply asserted that his removal from the UK as a result of the decision would be “incompatible under ECHR.” In a letter sent to the Tribunal in April 2014, it was submitted that the appellant had established private life here as he has been living here since 2006 and has an established business. However, no further evidence in that regard was produced.
- 24.** Judge Obhi did consider the evidence produced as to private life. Apart from the appellant having been here and having obtained degrees, there was no evidence of any business activity. He stated that this was because he was waiting for a decision from the respondent regarding his application [12]. The only submissions made on his behalf [15] were that he had been in the UK for eight years and had attained academic qualifications which made him a valuable member of society. The public interest was thus outweighed by the right to a private life.
- 25.** In the circumstances, after taking into account the public interest provisions under s.117B of the Nationality, Immigration and Asylum Act 2002, he dismissed the appeal.
- 26.** Having regard to the available evidence before him, there is nothing irrational in Judge Obhi’s finding that the legitimate aim of proper immigration control outweighed the right of the appellant to respect for his private life in the UK.

Notice of Decision

The making of the decision by the First-tier tribunal did not involve the making of any material error on a point of law. The decision shall accordingly stand.

No anonymity direction is made.

Signed

Dated 27/1/2015

Judge C R Mailer

Deputy Upper Tribunal Judge