



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

Appeal Number: IA/26349/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8th May 2015**

**Decision & Reasons Promulgated
On 21st May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**BHASKAR GUBBI SHIVEGOWDA
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr C Avery (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Butler, promulgated on 26th January 2015, following a hearing at Birmingham on 14th January 2015. In the determination, the judge allowed the appeal of Mr Bhaskar Gubbi Shivegowda. The Respondent Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of India, who was born on 20th June 1982. He appeals against the decision dated 23rd June 2014 of the Respondent refusing him leave to remain in the UK as a Tier 1 (General) Migrant under the points-based system.

The Judge's Findings

3. The judge observed how the Appellant had been refused points under Attributes because the dividend payments to the Appellant were not shown as gross and net figures and were not corroborated by the bank statements. The Appellant also was not provided any points for UK experience because he had not provided sufficient evidence as required by paragraph 245CA(b) of the Rules.
4. The judge held that it was open to the Secretary of State to contact the Appellant in writing and request the correct documents. No such request was made in the Appellant's case and the judge held that it was not reasonable to do so in respect of the detail of the dividend payments (see paragraph 12). There had been directions given by an earlier judge (see paragraph 9) and these had not been complied with by the Secretary of State, and so the information was not before the judge, such that the basis of the refusal could not be substantiated, so that the appeal had to be allowed.

Grounds of Application

5. The grounds of application state that the reality was that the Appellant had departed the UK voluntarily on 25th September 2014. Neither the Appellant nor his representative informed the Tribunal of this prior to the hearing. As a result, the judge heard the case on the papers when the appeal should have been treated as having been abandoned. There was no effective appeal before the judge.
6. On 3rd March 2015, permission to appeal was granted on two points. First, that this was an application under the PBS and given that the Appellant had left voluntarily on 25th September 2014 the appeal stood to be treated as abandoned. Second, the judge observed that the Appellant had produced in his appeal a schedule of gross and net salary and gross and net dividends received by him, but he had failed to produce these details with his application as required by the Rules: see **Ahmed [2014] UKUT 365**.

Submissions

7. At the hearing before me on 8th May 2015, the Appellant was naturally not in attendance and nor was anyone else in attendance on his behalf. Mr Avery, appearing on behalf of the Respondent, simply repeated the grounds of application to the effect that if the Appellant had left the UK voluntarily then the appeal was abandoned. Reliance was placed before me on two documents which Mr Avery handed up to confirm this fact.

Error of Law

8. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.
9. First, I have two different CID notes submitted before me by Mr Avery. The first states that,
“Subject called requesting to voluntarily depart. Subject has booked a flight for 25th September at 1400 hours from Heathrow Airport, TN5, I have advised subject that a caseworker will call him back within 24 hours to discuss a case” (dated 13th June 2014).
10. The second document states that, “departure confirmed by E-Boarders. Case closure completed on CID and database. E-mailed caseworker to close H/O file” (see 13th June 2014).
11. Second, in the light of this, it is clear that the Appellant did depart and was no longer in the country.
12. Third, it follows from this that under Section 104(4) of the 2002 Act, this appeal is statutorily abandoned and the judge below had no jurisdiction to hear it. It is unfortunate that the matter was not brought before the judge.

Remaking the Decision

13. I have remade the decision on the basis of the findings of the original judge, the evidence before her, and the submissions that I have heard today. I am dismissing this appeal for the reason that under Section 104(4) of the 2002 Act, this appeal is statutorily abandoned.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is dismissed.

No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

16th May 2015