



IAC-FH-AR-V1

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

Appeal Numbers: IA/28756/2014
IA/28758/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 24 August 2015**

**Decision & Reasons Promulgated
On 7 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SHERAZ AHMED (FIRST RESPONDENT)
NAGINA SHERAZ (SECOND RESPONDENT)
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer

For the Respondents: Mr I Khan, Immigratin4U

DECISION AND REASONS

The Appellants

1. The application for permission to appeal was made by the Secretary of State but nonetheless I shall refer to the parties as they were described before the First-tier Tribunal, that is Mr Ahmed and Miss Sheraz as the appellants and the Secretary of State as the respondent.

2. The first appellant was born on 24 April 1980 and is the husband of the second appellant, born on 25 February 1988. They are citizens of Pakistan.
3. The first appellant made an application on 14 June 2014 for leave to remain under the Tier 1 (General) Migrant points-based system scheme. The second appellant's application was dependent on that of the first.
4. The application was refused on 30 June 2014 as the appellant had failed to score the sufficient points under the 'previous earnings' head of Appendix A and the application was rejected under paragraph 245CA(c) and Appendix A of the Immigration Rules.
5. The Secretary of State noted that the appellant had not provided any specified documents as set out in Appendix A of the Immigration Rules to show that he had registered for, or paid National Insurance Class 2 contributions for the earnings that he had received from his self employment.
6. As the Secretary of State identified the Immigration Rules specify as follows:
Appendix A paragraph 19(b)
The specified documents in paragraph 19(b) are:
(i) If the applicant's National Insurance is paid by bill, the original bill from the billing period immediately before the application.
(ii) If the applicant's National Insurance is paid by direct debit, the most recent bank statement issued before the application, showing the direct debit payment of National Insurance to HM Revenue & Customs.
(iii) If the applicant has low earnings, an original small earnings exception certificate issued by HM Revenue & Customs for the most recent return date.
(iv) If the applicant has not yet received the documents in (i) to (iii), the original, dated welcome letter from HM Revenue & Customs containing the applicant's unique taxpayer reference number.
7. The Secretary of State identified that if the applicant had not yet received the documents in (i) (ii) or (iii) (above) or (iv) the original dated welcome letter from HMRC containing the applicant's unique tax payer reference number. The application was refused.
8. The appellant appealed against the respondent's decision of 30 June 2014 to refuse his application.
9. Judge Parker of the First-tier Tribunal allowed the appellant's appeal on 2 April 2015 on the basis that the only reason the application was refused was because of the appellant's apparent failure to provide one of the specific documents referred to above.

10. At the appeal hearing the appellant's evidence was that he submitted a specified document, a namely the welcome letter dated April 2014 on 21 June 2014. He stated he had already submitted the application together with other supporting documents on 14 June 2014 and the respondent's decision letter was made on 30 June 2014 but no reference was made to the welcome letter.
11. The judge set out at 16, 17 and 18 the following:
 - "16. I have carefully considered all the evidence before me. The only reason that the application was refused was owing to the appellant's failure to provide one of the specified documents concerning his national insurance class 2 contributions as a self-employed person. At the appeal hearing the appellant claims to have submitted the welcome letter dated April 2014 to the respondent on 21 June 2014, having submitted the application together with other supporting documents on 14 June 2014. His explanation for the late submission of this document is that he had given it to his accountant with all the other documentation in an envelope and it had not been returned to him until the Tuesday after he submitted his application. Although the document was submitted late, it had been submitted prior to the respondent's decision having been made (on 30 June 2014).
 17. Under the points-based system I cannot consider evidence submitted after the decision. The appellant claims to have submitted his welcome letter of April 2014 exactly a week after his application together with supporting evidence was submitted but before the decision was made by the respondent. There is no copy of the letter of April 2014 from HM Revenue & Customs in the respondent's bundle and there is no reference to it in the refusal letter. On the evidence before me I am satisfied that this was not before the decision maker when the decision was made. However I am satisfied that this is a genuine (albeit copy) document before me at the hearing and I note that the letter from the appellant's accountants dated 12 June 2014 refers to the appellant's unique tax reference number. A copy of this is contained in the respondent's bundle.
 18. The appellant's representatives sought to rely upon the evidential flexibility policy but I am not satisfied that this would have assisted the appellant in the event of the welcome letter having been submitted after the decision was made. Ms Khan had helpfully set out the provisions of paragraph 245AA in their entirety in her skeleton argument. However this merely confirms the respondent's position, namely, that the respondent will only request documents under the evidential flexibility policy where documents in a series have been omitted (e.g. one bank statement from a series); the document is in a wrong format; is a copy or does not contain all the specified information. (Paragraph 245AA(b)). The policy clearly states that documents will not be requested where a specified document has not been submitted and paragraph 245AA(d) relied upon by the appellant's representative refers to omissions with a "specified document". However it is common ground that there was not an error with the specified document relating to the appellant's national insurance contributions - no documentation relating to this aspect of the application had been submitted."

12. In essence the judge noted that the welcome letter was addressed to the appellant and contained a UTR which was the same as that given for the appellant in the letter from his accountants dated 12 June 2014.
13. The judge found that had the original welcome letter from HMRC been linked with the appellant's application and placed before the decision maker when the decision was made the application would have been successful. The judge made the following finding at [20]:

“I am satisfied that the appellant had submitted the original welcome letter from HMRC regarding his national insurance contributions to the respondent, as he claims, on 21 June 2014 and that this was sent to the respondent before the decision was made. I am satisfied that this document, had it been before the decision maker rather than simply somewhere on the respondent's premises, the application would have been granted.”
14. The judge further found that the evidential flexibility point was not relevant.
15. An application for permission to appeal was made on the basis that as this was a points-based system application Section 85A of the Nationality, Immigration and Asylum Act 2002 applied and precluded the submission of late documents in this instance. It was submitted that the Judge of the First-tier Tribunal had no jurisdiction to consider the document referred to in paragraph 16 as it was submitted after the application. Pursuant to **Raju and Khatel v SSHD [2013] EWCA Civ 754** it was a matter of settled law that the application date meant simply that, and was not an ongoing window in which to submit further documents unless the documents fell within the provisions of Rule 245AA.
16. At paragraph 245AA

“245AA. Documents not submitted with applications

 - (a) *Where Part 6A or any appendices referred to in Part 6A state that specified documents must be provided, the Entry Clearance Officer, Immigration Officer or the Secretary of State **will only consider documents that have been submitted with the application**, and will only consider documents submitted after the application where they are submitted in accordance with subparagraph (b).*
 - (b) *If the applicant has submitted specified documents in which:*
 - (i) *Some of the documents in a sequence have been omitted (for example, if one bank statement from a series is missing);*
 - (ii) *A document is in the wrong format (for example, if a letter is not on letterhead paper as specified); or*
 - (iii) *A document is a copy and not an original document; or*

(iv) *A document does not contain all of the specified information;"*

the Entry Clearance Officer, Immigration Officer or the Secretary of State may contact the applicant or his representative in writing, and request the correct documents. The requested documents must be received at the address specified in the request within 7 working days of the date of the request.

(c) *Documents will not be requested where a specified document has not been submitted (for example an English language certificate is missing), or where the Entry Clearance Officer, Immigration Officer or the Secretary of State does not anticipate that addressing the omission or error referred to in subparagraph (b) will lead to a grant because the application will be refused for other reasons.*

(d) *If the applicant has submitted a specified document:*

(i) in the wrong format; or

(ii) which is a copy and not an original document; or

(iii) which does not contain all of the specified information, but the missing information is verifiable from:

(1) other documents submitted with the application,

(2) the website of the organisation which issued the document, or

(3) the website of the appropriate regulatory body;

the application may be granted exceptionally, providing the Entry Clearance Officer, Immigration Officer or the Secretary of State is satisfied that the specified documents are genuine and the applicant meets all the other requirements. The Entry Clearance Officer, Immigration Officer or the Secretary of State reserves the right to request the specified original documents in the correct format in all cases where (b) applies, and to refuse applications if these documents are not provided as set out in (b).

17. Where part 6A or any appendixes referred to in part 6A state that specified documents must be provided as the Entry Clearance Officer, Immigration Officer or the Secretary of State will only consider documents that have been submitted with the application and will only consider documents submitted after the application where there is submitted in accordance with paragraph 245(b). In this instance the appellant's claim does not fall within subparagraph 245(b) and I therefore find there was an error of law. Paragraph 245CA specifically states that to qualify for leave to remain as a Tier 1 (General) Migrant an applicant must meet the requirements listed below. If the applicant meets these requirements

leave to remain will be granted. If the applicant does not meet these requirements the application will be refused.

18. One of the provisions is that 245CA(c) in all cases the applicant must have 80 points under paragraph 7-34 of Appendix A.
19. Paragraph 19B of Appendix A sets out the specified documents as detailed above and it is clear that the applicant had not submitted all the relevant documents *with his application*. Following **Raju** an application is made when it is said it is made under paragraph 34G.

34G. For the purposes of these rules, the date on which an application or claim (or a variation in accordance with paragraph 34E) is made is as follows:

- (i) where the application form is sent by post the date of posting*
- (ii) where the application form is submitted in person, the date on which it is accepted*

20. At the hearing Mr Khan conceded that the welcome letter from HMRC had not been submitted with the application but seven days afterwards. I was invited to look at the purpose of the Rules and consider that it was not the case that the appellant in this particular matter was attempting to frustrate the Immigration Rules.
21. I can accept the appellant is not attempting to frustrate the Immigration Rules but paragraph 245CA of the Immigration Rules at subsection (c) confirms that in all cases the applicant must have 80 points under paragraphs 7-34 of Appendix A. Appendix A at paragraph 19SDB sets out the specified documents and these include those listed above.
22. In turn, paragraph 245AA states that (a) where Part 6A or any appendices referred to in Part 6A state that specified documents *must* be provided the Entry Clearance Officer, Immigration Officer or the Secretary of State will only consider documents that have been submitted with the application and will only consider documents submitted after the application were they are submitted in accordance with paragraph (b).
23. This precludes the submission made by the appellant and it is notable that further to paragraph 245AA(d) it cannot be said to be the case that the appellant had submitted a specified document, as Mr Khan invited me to conclude, in the wrong format, or which is not an original or which does not contain all of the specified information but the missing information is verifiable from one other document submitted with the application to the website of the organisation which issued the document or (3) the website of the appropriate regulatory body.
24. My conclusion in this is reinforced in effect by **EK (Ivory Coast) [2014] EWCA Civ 1517** which emphasises at paragraphs 28 and 29 that all the

specified documents must be submitted with the application and Sales LJ has this to say:

1. The PBS is intended to simplify the procedure for applying for leave to enter or remain in the United Kingdom in certain classes of case, such as economic migrants and students. This is to enable the Secretary of State to process high volumes of applications in a fair and reasonably expeditious manner, according to clear objective criteria. This is in the interests of all applicants. It also assists applicants to know what evidence they have to submit in support of an application.
1. As Sullivan LJ observed in *Alam*, it is an inherent feature of the PBS that it "puts a premium on predictability and certainty at the expense of discretion" (para. [35]). Later, at para. [45], he said:

"... I endorse the view expressed by the Upper Tribunal in *Shahzad* [*Shahzad* (s 85A: commencement) [2012] UKUT 81 (IAC) (paragraph 49) that there is no unfairness in the requirement in the PBS that an applicant must submit with his application all of the evidence necessary to demonstrate compliance with the rule under which he seeks leave. The Immigration Rules, the Policy Guidance and the prescribed application form all make it clear that the prescribed documents must be submitted with the application, and if they are not the application will be rejected. The price of securing consistency and predictability is a lack of flexibility that may well result in "hard" decisions in individual cases, but that is not a justification for imposing an obligation on the Secretary of State to conduct a preliminary check of all applications to see whether they are accompanied by all of the specified documents, to contact applicants where this is not the case, and to give them an opportunity to supply the missing documents. Imposing such an obligation would not only have significant resource implications, it would also extend the time taken by the decision making process, contrary to the policy underlying the introduction of the PBS.".
25. As stated in ***Raju*** an application is made when it says it has been made and further to paragraph 34G of the Immigration Rules it is clear that this application was made on 14 June 2014. Even it is accepted that the documents were sent in on 21 June 2014, they were sent in seven days later and comply with neither the evidential requirements under Section 85A of the Nationality, Immigration and Asylum Act 2002 nor the Immigration Rules.
26. In sum the appellants cannot comply with the Immigration Rules under Paragraph 245CA.
27. It has been held that Article 8 is not a general dispensing power and further to ***Nasim and others (Article 8)*** [2014] UKUT 00025 (IAC) I am not persuaded that there are any valid grounds in respect of an Article 8 claim.
28. The Judge erred in law materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and

Enforcement Act 2007 (TCE 2007) and remake the decision under section 12(2) (b) (ii) of the TCE 2007 and dismiss both appeals, the second being dependent on the first.

Order

The appeals of Mr Sheraz Ahmed and Ms Nagina Sheraz are dismissed.

Signed
Deputy Upper Tribunal Judge Rimington

Date 6th October 2015

TO THE RESPONDENT
FEE AWARD

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

Signed
Deputy Upper Tribunal Judge Rimington

Date 6th October 2015