



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: IA/49288/2013**

Appeal

THE IMMIGRATION ACTS

**Heard at Field House, London
Determination Promulgated
On 16 April 2015
2015**

On 5th May

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MUHAMMAD ASIM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr M Ilahi, Rana & Co Solicitors
For the respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is Muhammad Asim, a national of Pakistan. He appealed to the First-tier Tribunal against the decision of the Secretary of State dated 29 August 2013 to refuse his application for leave to remain as a Tier 1 (Entrepreneur) under the Points Based System. Judge of the First-tier Tribunal David C Clapham dismissed his appeal. He now appeals with permission to this Tribunal.

2. On 9 October 2014 I set aside the decision of the First-tier Tribunal for the following reasons;

- Although the grounds submit that the appellant did not attend the hearing in the First-tier Tribunal Mr Ilahi acknowledged that the appellant had not advised the Tribunal of his change of address and that there was no issue being taken in relation to the first paragraph of the grounds of appeal.
- In the reasons for refusal letter the respondent indicates that no points were awarded under Appendix A of the Immigration Rules in relation to funds. The appellant provided bank statements and a letter from the National Bank of Pakistan as evidence of the required funds and the respondent said that those documents had been excluded from consideration of the application because;

“We have attempted to verify the documents detailed above, using standard procedures, but have been unable to do so.”

- The First-tier Tribunal Judge referred to the reasons for refusal letter and the requirements of paragraph 39B(c) of the Immigration Rules and concluded that the respondent was entitled to proceed as she did and dismissed the appeal.

Error of Law

- Paragraph 39B(c) of the Rules deals with specified documents and provides;

39B.

...

(c) If the Entry Clearance Officer or Secretary of State has reasonable cause to doubt the genuineness of any document submitted by an applicant which is, or which purports to be, a specified document under these Rules, and having taken reasonable steps to verify the document is unable to verify that it is genuine, the document will be discounted for the purposes of this application.

- I consider that paragraph 39B(c) requires a two stage process. The respondent must show that she had ‘reasonable cause’ to doubt the genuineness of a document and then secondly that she has taken ‘reasonable steps’ to verify the document.
- Mr Whitwell, who appeared for the Secretary of State at the error of law hearing, submitted that the statement in the reasons for refusal letter that the respondent had attempted to verify the documents using the standard procedure was enough to satisfy paragraph 39B(c). However Mr Ilahi submitted that it is not obvious from the respondent’s bundle what caused her to doubt the genuine nature of the documents or what steps were taken to verify them.

- I am satisfied that the assertion in the reasons for refusal letter is insufficient to show reasonable cause or that reasonable steps were taken to verify the documents. The Judge erred in failing to engage properly with paragraph 39B(c) and in failing to examine whether the respondent had shown reasonable cause or that reasonable steps were taken. Had he done so he would have been bound to come to the conclusion that she did not.

3. I set aside the decision of the First-tier Tribunal in its entirety. Mr Whitwell submitted documents at the error of law hearing from the respondent's file which went to the reasons for investigating the bank documents. I granted Mr Ilahi's application for an adjournment to seek evidence to rebut the respondent's assertions and evidence.

4. At the resumed hearing Mr Ilahi submitted a new letter from the National Bank of Pakistan dated 10 April 2015. Mr Melvin relied on the documents previously submitted.

5. The documents submitted by the respondent include a case note dated 26 June 2013 which states that the application was being referred to the 'genuineness team' as the overseas bank statements show large amounts of money being transferred over a short period of time and there was a concern about the sudden increase in funds. A case note from 3 July 2013 records a first enquiry which was an attempt to telephone the bank branch on the telephone number which appears on the bank letter. It is recorded that the number is invalid and that emails were sent to two contacts in the Bank. The final case note is dated 16 August 2013 which records that an email was sent to the Bank with scanned copies of documents attached but that no reply had been received within 28 days. The case was recorded as having been concluded with an 'inconclusive' result.

6. The further evidence submitted on the appellant's behalf is a letter dated 10 April 2015 from the Bank and is in almost identical terms to the letter dated 2 November 2012 except that it is stated that he has 35691900 PKR instead of the 31691900 PKR held in November 2012.

7. Mr Melvin submitted that the new letter does nothing to address the Secretary of State's concerns; it does not address why there was no reply from the compliance department of the Bank. He submitted that there is no evidence the appellant has written to the National Bank of Pakistan demanding to know why they have not provided the Home Office with the confirmation sought or seeking remuneration for their failure to do so.

8. Mr Ilahi submitted that the case notes do not amount to direct evidence that the respondent has tried to verify the documents. He submitted that in the absence of the emails and evidence of reminders to the Bank the respondent had not shown that she took reasonable steps to verify the documentation.

9. As set out above paragraph 39B (c) of the Immigration Rules involves a two stage process. I am satisfied on the basis of the case notes that the

significant increase in the appellant's bank balance between August and September 2012 of around 227,000,000 PKR is sufficient to demonstrate cause on the part of the respondent for her doubt as to the genuineness of the bank documents.

10. In those circumstances the respondent was required under paragraph 39B (c) to take reasonable steps to verify that the documents are genuine. Mr Ilahi submitted that the actions taken by the respondent do not amount to reasonable steps. The case note records that one phone call was made but that the number was invalid. Mr Ilahi questioned how this number was invalid when it is stated that it was verified from the internet. He submitted that the respondent should have sent a reminder when there was no response to the email and that the emails should have been produced. However the two email addresses used have been reproduced and I am satisfied on the basis of the case notes that emails were sent to the recipients.

11. I am satisfied that the actions take by the respondent were reasonable. A telephone call and two emails to the Bank amounts to reasonable steps. The appellant has been aware that this is the one issue to be determined since the hearing in October 2014. He had the documents submitted by the respondent at the last hearing and has therefore had ample opportunity to obtain evidence to rebut the claims made in the case notes. He has chosen instead to produce a letter in almost identical terms to that previously produced.

12. On the basis of the evidence before me I am satisfied that the respondent has complied with the requirements of paragraph 39B (c) and that the bank documents should in these circumstances be discounted for the purposes of this application. The appeal therefore falls to be dismissed.

Conclusion:

The making of the decision of the First-tier Tribunal did involve the making of a material error on a point of law.

I set the decision aside and remake it by dismissing it.

Signed
May 2015

Date: 1

A Grimes
Deputy Judge of the Upper Tribunal

