



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

Appeal Number: IA/46298/2014

THE IMMIGRATION ACTS

Heard at Manchester

Decision & Reasons

On 17th November 2015

Promulgated

On 12th January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR SOLOMON OLUFEMI OLUDARE OKUNNU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Miss C Johnstone, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria born on 20th September 1981. The Appellant originally was granted leave to enter the UK as a Tier 4 (General) Student on 15th October 2010. That leave was subsequently extended on two occasions; the latter as a Tier 1 (Post-Study) Migrant. On 2nd October 2014 the Appellant made a further application for leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant under the points-based system (PBS) and for a biometric residence permit (BRP).

2. That application was refused by the Secretary of State in a Notice of Refusal dated 3rd November 2014 on the basis that the Appellant had not submitted the evidence specified at paragraph 41-SD(e) of Appendix A of the Immigration Rules and that as a result the Appellant had not demonstrated he met the requirements of the Rules to be awarded points under provision (d) in the first row of Table 4 of Appendix A and that he had submitted no evidence that he qualifies for points under any other provisions in the first row of Table 4 of Appendix A.
3. The Appellant appealed and the appeal came before Immigration Judge Edwards sitting at Manchester on 3rd March 2015. In a decision and reasons promulgated on 6th March 2015 the Appellant's appeal was dismissed both under the Immigration Rules and on human rights grounds.
4. On 16th March 2015 Grounds of Appeal were lodged to the Upper Tribunal. On 6th May 2015 First-tier Tribunal Judge Astle granted permission to appeal. Judge Astle noted that the grounds stated that the Respondent had failed to comply with the directions of a previous judge and that the sole issue was that of payment for the application to which the case of *Basnet [2012] UKUT 00113 (IAC)* was relevant. It was argued that the judge decided the appeal did not make a full and properly reasoned decision and failed to make proper findings on the "*Basnet*" issue and that it was arguable that the judge's reasoning was inadequate.
5. On 27th May 2015 the Secretary of State responded to the Grounds of Appeal under Rule 24. The Rule 24 response noted that although brief the determination confirms that the judge had considered the evidence and had had regard to *Basnet*. It contended that the judge was satisfied to the correct standard of proof that the schedule produced by the Presenting Officer made out the Respondent's case.
6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears in person as he did before the First-tier Tribunal. The Secretary of State appears by her Home Office Presenting Officer Miss Johnstone.

Submissions/Discussion

7. Miss Johnstone takes me to the evidence that was before the First-tier Tribunal as set out in paragraph 14 of Judge Edwards' determination. She notes that the judge was aware that when the Appellant submitted a correct application his original leave had expired. Thus when he submitted it he did not have an in-country right of appeal. He points out that the judge was correct to find that the Appellant was unable to produce to him bank statements showing payment of the fee and that the Home Office Presenting Officer had handed to him a schedule showing that it had not been taken.

8. She takes me to the decision in *Mitchell* reminding me that the decision of the Tribunal in *Basnet* does not put the burden of proof on the Secretary of State where the application was, on its face, insufficiently completed. Although it is not for the Secretary of State to say why the funds were not accepted.
9. She contends the judge had dealt with this issue and the suggestion put forward both in the Grounds of Appeal and referred to in the grant of permission to appeal was that the judge had failed to address the issue of *Basnet* properly. She submits that he had.
10. I invited the Appellant that I would hear any submissions that he wished to make without interruption. Mr Okunnu advised that he understood the position and that all he wished to say was that it was his hope and intention to set up a public relations company. What his application was supposed to be was a continuation of his original application and he says that he does not know why the money was not originally taken.

The Law

11. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
12. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

13. The fact remains that the Secretary of State rejected the initial application. *Mitchell* is clear authority *Basnet* does not put the burden of proof on the Secretary of State where the application was insufficiently completed or in this case not accompanied by an appropriate fee. It is clear that the

burden of proof is on the Appellant and the Appellant is unable to discharge this burden of proof. Such issues have been addressed within the determination and consequently the determination does not disclose a material error of law. In such circumstances the Appellant's appeal must fail. That is not to say that the Appellant will not ultimately be able to develop his proposed business. It will be open to him to make a fresh application within 28 days of the completion of the appeal process. No doubt if such an application is made this time he will ensure that it is properly completed and that the appropriate fee is paid.

Decision

The decision of the First-tier Tribunal discloses no material error of law and the appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris