



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/08866/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 25<sup>th</sup> November 2013

Determination Promulgated  
On 10<sup>th</sup> December 2013  
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Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR MD SAIFUL ISLAM

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Claimant: Mr A Syed-Ali (Immigration Aid)  
For the Respondent: Mr P Nath (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Secretary of State against the decision of the First-tier Tribunal (Judge Glossop) by which he allowed the Appellant's appeal against the Secretary of State's refusal to grant him further leave to remain in the UK as a Tier 4 (General) Student Migrant.
2. For the sake of clarity and continuity I shall continue to refer, in this determination, to the Secretary of State as Respondent and to Mr Islam as the Appellant even though this is the Secretary of State's appeal.

3. My first task is to decide whether the First-tier Tribunal made an error of law and if so whether and to what extent its determination should be set aside.
4. The Secretary of State was not represented before the First-tier Tribunal. The Appellant was represented, as he was before me, by Mr Syed-Ali. The Judge's determination is extremely brief. At paragraph 3 the Judge noted that in a decision dated 6th March 2013 the Appellant's application was refused by the Secretary of State because although he had claimed 10 points for maintenance under Appendix C, the Respondent was not satisfied that the documents provided contained the details required by the Rules and thus the application was refused under paragraph 245ZX(d). The Respondent indicated that the Appellant was required to show that he had the required maintenance funds of £2000 plus any outstanding course fees which meant, in this case, a total sum of £3800 was needed. The Appellant had to show those funds were in his account for the 28 day period required by paragraph 1A of Appendix C. The bank statement did not show the name of the account holder and the letter from Lloyds TSB failed to show the account number. I would add at this stage that the Secretary of State was correct in those comments about the evidence produced by the Appellant.
5. The Judge noted the evidence at the hearing which included a witness statement, adopted by the Appellant in which he stated that he had sent his bank statements to the Secretary of State with a letter dated 28th December 2012 which confirmed his name and address and that the Respondent had not taken that letter into account. The Appellant said that he could have been contacted by the Secretary of State for further details and that he had been continuing his course and attending regularly. His evidence was that he did have sufficient funds at the time of the application.
6. The Judge referred to submissions made on behalf of the Appellant that he ought to succeed under the evidential flexibility policy in accordance with Rodriguez (Flexibility Policy) [2013] UKUT 00042 (IAC).
7. The Judge at paragraph 7 commented that he may take into account evidence at the date of the hearing. I would state at this stage that in making that remark the Judge erred because section 85A of the Nationality, Immigration and Asylum Act 2002 which applies to Points Based System appeals provides that only evidence submitted with the application can be taken into account and so evidence or letters sent to the Secretary of State after the application was made cannot be taken into account.
8. The Judge then says at paragraph 8 "the Appellant has demonstrated that he was sufficiently identified for the monies that banked be (sic) as it were credited to his account with the Respondent. The Respondent could have come to the conclusion that the monies were available to the Appellant. I find that were that not the case the Respondent should have enquired of the Appellant when the matter could be clarified as it has been to the Tribunal."
9. That paragraph is sadly lacking in clarity. If the Judge was saying that the Secretary of State should have considered the post-application evidence and allowed the

application he was wrong. If he was saying that the Secretary of State should have made further enquiries of the Appellant he was right for reasons which follow.

10. At paragraph 9 the Judge allowed the appeal.
11. Given that the Appellant could not succeed outright under the Immigration Rules because of s.85A the appeal could only have been allowed on the limited basis that the Secretary of State's decision was unlawful and required her to make a lawful decision. In allowing the appeal outright the Judge made an error of law.
12. That error of law was accepted by both representatives before me and so I set the determination aside. I then proceeded to rehear the appeal with the agreement of both representatives. I was provided by Mr Syed-Ali with a copy of the Secretary of State's Policy Guidance in force at the relevant date for this application. Although the version that I was provided with is dated October 2013, Mr Nath assured me that the relevant part of the Policy was unchanged.
13. Paragraph 202 of that Policy Guidance reads as follows:-

"The following documents can be used to show money available to you:

i. Personal bank or building society statements covering a consecutive 28 day period ending no more than 31 days before the date of your application. Your personal bank or building society statements must show:

- your name or your parent (F)/legal guardians name; and
- the account number; and
- the date of the statement; and
- the financial institutions name and logo; and
- the amount of money available.

Ad hoc bank statements printed on the bank's letterhead are acceptable as evidence (this excludes mini statements from cash points).

If you wish to submit electronic bank statements these must contain all of the details listed above. In addition, you will need to provide a supporting letter from your bank on company headed paper, confirming the authenticity of the statements provided.

Alternatively an electronic bank statement bearing the official stamp of the bank in question will be accepted. This type must appear on every page of this statement."

14. I have not included the remainder of paragraph 202 which is not relevant for the purposes of this appeal. The crucial part of paragraph 202 is the final part recited above. Electronic bank statements are not required to have the same characteristics as personal bank statements detailed as an alternative. In this case the Appellant produced electronic bank statements which did bear the official stamp of the bank in

question and the stamp did appear on every page of the statement. The statement also clearly included the sort code and account number on each page. Accordingly, it was accepted by Mr Nath that in terms of the Policy Guidance the Appellant had complied with the requirements the Rules to show that he met the maintenance requirement and had the Secretary of State taken into account her own Policy Guidance as she should have done, then she would have found the Appellant met the maintenance requirements.

15. Therefore it is apparent that the Secretary of State's decision was an unlawful decision and it is appropriate therefore for to me to allow the appeal to the limited extent that it is remitted to the Secretary of State for a lawful decision to be made. It is apparent from the evidence and the Policy Guidance that the Appellant is entitled to succeed under the Rules. However that is a decision for the Secretary of State to make.
16. The First-tier Tribunal having made an error of law for the reasons I have indicated above the determination is set-aside and so the appeal to the Upper Tribunal is allowed. In remaking the decision the result of the Appellant's original appeal against the Secretary of State's decision is allowed to the limited extent detailed in the preceding paragraph.

Signed  
Upper Tribunal Judge Martin

Date 2<sup>nd</sup> December 2013