



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

Appeal Numbers: IA/25788/2012

THE IMMIGRATION ACTS

**Heard at Glasgow
On 2 October 2013**

**Determination
Promulgated
On 5 December 2013**

Before

**Mr C M G Ockelton, Vice President
Upper Tribunal Judge Macleman**

Between

Muhammad Azeem

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Azhar Chohan, instructed by United Solicitors
For the Respondent: Mr A Mullen, Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The appellant, a national of Pakistan, applied to the Secretary of State on 25 July 2012 for further leave as a Tier 4 (General) Student Migrant. On 7

November 2012, his application was refused, and at the same time a decision was made to give directions for his removal pursuant to s.47 of the Immigration, Asylum and Nationality Act 2006. He appealed against those decisions to the First-tier Tribunal. The appellant did not seek an oral hearing. Judge Hubball allowed the appellant's appeal against the latter decision (as, on the authorities, he was bound to do), and dismissed the appeal against the substantive decision refusing him leave.

2. The only issue is maintenance; and the only question in regard to maintenance is the extent to which the appellant complied with the formal requirements of paragraph 1B of Appendix C to the Statement of Changes in Immigration Rules, HC395. The relevant part of the judge's determination is as follows:

"10. I now turn to the Respondent's decision refusing the Appellant leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant. The Respondent has stated that the bank statements submitted in support of the Appellant's application for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant, do not contain all the mandatory information as stated under paragraph 1B of Appendix C to the Immigration Rules. The bank statements do not show the following information: the name of the account holder, and the account number, and the date of each statement, and the financial institution's name, and the financial institution's logo and that the funds in the account have been at the required level during the specified period. In these circumstances the Respondent has refused to award the Appellant 10 points under Appendix C (Maintenance (funds)) and refused the Appellant's application under paragraph 245Z(d) of HC 395.

11. In his Notice of Appeal the Appellant stated that the Respondent has lost the top page of the bank statements. The Appellant provided the Respondent with three pages of the statements and the top page held all of the required details. The Respondent returned the two pages of the bank statement to the Appellant and has lost the top page. The Appellant had discussed the situation with the caseworker who advised that the bank statement did not confirm his account number, date of statement, bank's name, bank's logo and the required level of available funds.

12. It is clear that the bank documents provided by the Appellant in support of his application of 25th July 2012 is a view statement of entries relating to bank account stamped by the Bank of Scotland on 25th July 2012. The name of the account holder is not given, the account number is not given, the date of the bank statement is not given, the statement of entries does not contain the financial institution's name and logo. And there is reference in the document to statement number 4.

13. In these circumstances these documents which appear at D1 of the Respondent's bundle are clearly not compliant with Appendix [sic] 1B of Appendix C of the Immigration Rules.

14. The Appellant has not provided the top page of this view statement of entries which he says complies with the requirements of paragraph 1B of Appendix C to the Immigration Rules.
 15. The burden of proof in this appeal rests upon the Appellant to satisfy me on a balance of probabilities that paragraph 1B of Appendix C of the Immigration Rules has been complied with. On the evidence before me, the Appellant has failed to discharge this burden of proof".
3. The appellant now has permission to appeal to this Tribunal.
 4. So far as formal compliance with the Rules is concerned, the appellant has always said, as recorded by the judge at paragraph 11, that the Secretary of State failed to consider all the documents he had sent. His bank statement consisted of three pages: the two that were returned to him as unable to satisfy the requirements of the Rules, and a third which contained his name and address and the other details required by paragraph 1B. The appeal to this Tribunal is on the ground that the judge failed to consider all the evidence, and in addition failed to appreciate what impact the Secretary of State's "flexibility policy", allowing partially defective documents to be corrected before they are considered, might have on the appellant's case.
 5. We heard submissions from Mr Chohan on both those issues. Mr Mullen pointed out that the documents in the bundle, two outline bank statements each marked "page 1 of 1" could not comply with the Rules. But he was unable to show us any evidence counteracting what the appellant had said about there having been another page with them.
 6. The judge was faced with a clear assertion of fact. It is very far from clear from the determination why that assertion was rejected. Nothing in the documents before the judge seemed to indicate that it was unreliable. On the contrary, the judge had ready access to information showing that the Secretary of State's assessment of the document was unreliable. The evidence included both pages of the bank statements that the Secretary of State accepted had been sent, and her assessment of them. That assessment was correctly set out by the judge in paragraph 10. It is not accurate: the statements produced did show the account number, did bare a date stamp, and did show that the funds had been at the required level during the specified period. We do not quite know what is meant by a "logo" or how precisely it is to be defined for these purposes, but the rubber stamp of the Bank of Scotland is applied to each page. Faced with a clear assertion by the party bearing the burden of proof and no evidence to the contrary, but clear evidence that the party with an interest in asserting the contrary has made other errors in assessment of the application, it seems to us that the judge erred in law by failing to explain properly the reason for saying that the appellant had failed to discharge his burden of proof.

7. As we have said, the only issue in this appeal is formal compliance with the Rules. Given the defects in the decision to which we have adverted, and the lack of any evidence from the Secretary of State that only two pages of bank statements were supplied, we are content to set aside the First-tier Tribunal's decision for error of law and, on our assessment of the appellant's evidence, substitute a determination allowing the appeal.

C M G OCKELTON
VICE PRESIDENT OF THE UPPER

TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER
Date: 13 November 2013