Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/18513/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 21 July 2014	**On 5 August 2014**

Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

MR MARIS ASEKEME
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Ikeh
For the Respondent: Mr I Jarvis

DETERMINATION AND REASONS

1. The appellant is a national of Nigeria who was born on 28 July 1988. On 11 February 2013 he applied for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant under the points-based system. In a decision dated 7 May 2013 the application was refused under the Immigration Rules and a decision was made also for him to be removed

from the UK by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. I will say something shortly about the decision to remove.

2. The appellant appealed the decision and at an oral hearing, in which the appellant was not represented, the First-tier Tribunal Judge dismissed the appeal. On a renewed application to the Upper Tribunal the appellant was granted permission to appeal that decision and thus the matter came before me for an oral hearing at which the appellant was represented.

3. The reasons for refusal of the application reduce to one straightforward matter. Appendix C of the Immigration Rules, at 1B, requires when proving sufficiency of availability of funds that the document or documents must be personal bank or building society statements satisfying certain criteria. Such document or documents must be provided with the application. The reason for refusal in this case is that the appellant submitted a bank statement from his mother's business account with a bank called First City Monument Bank plc and this was found not to be an acceptable form of evidence. That being so the application was refused.

4. It was only *after* the date of decision that an explanation was provided by or on behalf of the appellant that in fact the account referred to, although stating "business savings account," was in fact an error by the bank. Evidence for this is provided in a letter from the bank dated 16 May 2013 stating that the appellant's mother maintains a personal savings account as against a business savings account "which reflected in her statement of account earlier printed". The error was said to be due to the last merger of "our banks (FCMB and Fin Bank). The account was wrongly migrated with the wrong code." A statement was attached to that letter then referring to the account type as being "basic savings".

5. The First-tier Tribunal Judge at the hearing clearly asked a lot of questions about the circumstances surrounding the application and noted various discrepancies including that the credit balances on the (by then) various statements did not "add up". He noted that there was a substantial discrepancy between the business account and the one provided with the notice of appeal. He also commented upon the fact that the appellant apparently used a friend's Mastercard to pay his fees and made particular note that the appellant had paid the entirety of the fees for the course by the time of the appeal and other bills.

6. The judge concluded that the documentation provided by the appellant did not comply with the requirements set out in the Rules relating to Tier 4 Students and dismissed the appeal. He did not mention the Section 47 removal direction and it is unlikely that he was referred to it.

7. In the grounds seeking leave to appeal the appellant went to some lengths to point out the reason why there appeared to be discrepancies in the bank statements and one can accept that much of what is said there is correct, in particular that the bank statements provided showed differing

cleared balances at different dates but still were consistent in providing evidence about the amount in the account between 29 December 2012 and 29 January 2013. These were the relevant dates between which the requisite funds had to be shown to have been in the account. However, that is not the issue here. The reason for refusal of the application and the dismissal of the appeal is that the statement produced clearly referred to the fact that the funds were held in a business account and not a personal one. It was not incumbent upon the Secretary of State to make further enquiries about that since there could have been no expectation that making such an enquiry would have led to the answer that has now been given i.e. that this was the bank's mistake and the account was in fact a personal savings one in the name of the appellant's mother and not a business account as it stated on its face.

8. The outcome therefore is that the appellant has not shown that the First-tier Tribunal Judge erred. The judge was entitled to come to the conclusions that he did for the reasons given because the appellant failed to comply with the relevant Rule.

The s.47 decision

9. Section 51 of the Crime and Courts Act 2013 substituted for Section 47(1) of the Immigration, Asylum and Nationality Act 2006 the ability for the Secretary of State to give written notice that the person is to be removed from the UK under that Section at the same time as a person is given written notice of a pre-removal decision. Up to that point it was not in accordance with the law to do so. See **Ahmadi v SSHD [2012] UKAIT 147 (IAC)**. Section 51 of the 2013 Act came into force on 8 May 2013 under the Crime and Courts Act 2013 (Commencement No. 1 and Transitional and Saving Provision) Order 2013.

10. I did not have my attention drawn to this point at the hearing and nothing seems to have been noticed previously about it. However, the removal decision was made on 7 May 2013 and in the same document as the refusal decision. It follows from what is said above therefore that it was not made in accordance with the law and must be set aside as not being in accordance with the law. It will be a matter for the Secretary of State to decide whether to issue removal directions in the future.

11. The judge did not err in dismissing this appeal and this is for the reasons set out above. The decision that the appeal is dismissed therefore stands.

12. No application was made for an anonymity direction and in the circumstances of this appeal I see no need for any such direction to be made.

Signed Date

Upper Tribunal Judge Pinkerton