



IAC-AH-KEW-V1

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

Appeal Number: IA/19532/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 October 2014**

**Decision and Reasons Promulgated  
On 31 October 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Appellant**

**and**

**MR MUHAMMAAD TAHEER ATHAR  
(ANONYMITY DIRECTION NOT MADE)**

**Respondent/Claimant**

**Representation:**

For the Appellant: Mr E Tufan, Specialist Appeals Team

For the Respondent/Claimant: No appearance

**DECISION AND REASONS**

1. The Secretary of State appeals to the Upper Tribunal the decision of the First-tier Tribunal (Judge E M M Smith sitting at Nottingham Magistrates' Court on 1<sup>st</sup> July 2014) allowing the claimant's appeal against the decision by the Secretary of State to refuse to grant him leave to remain as a Tier 4 Student Migrant under the points-based system. The First-tier Tribunal did not make an anonymity direction, and I do not consider that such a direction is required for these proceedings in the Upper Tribunal.
2. The claimant made his application for leave to remain on 7 March 2014. The application was refused on 8 April 2014. He was awarded 30 points for his CAS, but

0 points for maintenance. He was required to show living costs of £1,600 plus his outstanding course fees as stated in his CAS. He was therefore required to show that he was in possession of £1,600 for a consecutive 28 day period. The bank statement of account number 6533-2 had not been accepted as evidence of funds as the document had been confirmed as false by the issuing authority. He had therefore used deception in the application, and it was refused under paragraph 322(1A) of the Rules. The application was also refused under paragraph 245ZX(a) and (d) of the Rules.

3. The claimant asked for his appeal to be determined on the papers. The Home Office bundle contained a document verification report. Under the heading of "Detailed verification results" Glynne Moore in the "Document Centre Exception Department" was identified as the person who had carried out the verification of the proof of finances document purportedly issued by the National Bank of Pakistan, Sargodha branch. The report gave the account name, the account number and the stated current balance. Ms Moore's comments were as follows:

FALSE - checks with issuing body confirm documents are false (see attachment).  
Third party confirmation received on 28/3/14.

4. On 21 May 2014 a notice was issued to the claimant and to his solicitors stating that any written evidence and submissions had to be received by 18 June 2014. On 24 June 2014 there was received by the Tribunal an undated covering letter from the claimant's solicitors (Glynne Solicitors Limited) together with three enclosures. These comprised written submissions from the claimant's solicitors, a signed witness statement from the claimant with a statement of truth, and a copy of a letter purportedly sent by an unidentified branch manager of the Sarghoda Branch of the National Bank of Pakistan dated 13 June 2014. In this letter, the unidentified branch manager confirmed that the contents of the earlier letter issued by the branch on behalf of the claimant was genuine. Furthermore, they had not received "any verification" (sic) from UKBA/the British Embassy regarding this bank statement.
5. In the covering letter, Glynne Solicitors said that they would be sending the original letter from the National Bank of Pakistan in due course, as it was in the post at the moment according to their client.
6. The court file contains what purports to be the original bank letter, but it was not received by the Tribunal until 14 July 2014, which was after the appeal was decided by the First-tier Tribunal.

### **The Decision of the First-tier Tribunal**

7. In his determination, Judge Smith observed that there was "a complete divergence between the parties." On the one hand, the Secretary of State stated that on 28 March 2014 she had received confirmation from the issuing body that the bank statement was false. On the other hand, the claimant had produced a letter from the National Bank of Pakistan dated 13 June 2014 stating that it was true. The judge further observed that the Secretary of State had probably not seen the letter from the bank

dated 13 June 2014. But he could not exclude the letter from the bank which specifically addressed the claim made by the Secretary of State, and confirmed that the bank statement was genuine and that there were funds in the account; and by inference that they had been in the account for a consecutive period of 28 days. In the letter of refusal, the Secretary of State did not take issue with regard to the fact that if the bank statement was true, the claimant had satisfied the maintenance requirements. The judge reached the following conclusion at paragraph 22:

I find that the [SSHD] has not made out the claim that the documents produced by the [claimant] are false. It may well be that on further inspection the [SSHD's] position changes or improves but on the evidence before me I cannot find the document is false.

8. The judge allowed the appeal, but made no fee award as he was satisfied that the decision of the Secretary of State was reasonable at the time that it was made.

### **The Application for Permission to Appeal**

9. A member of the Specialist Appeals Team applied for permission to appeal, arguing it was obvious that little weight could be given to a letter asserting a document to be genuine in circumstances where the letter purported to emanate from the same source as the false document, and where the Home Office had been given no opportunity to investigate the genuineness of the new document. As a result of this procedural unfairness, the judge had fallen into material error of law.

### **The Grant of Permission to Appeal**

10. On 4 September 2014 Judge Verity granted permission to appeal for the following reasons:

The judge should have considered the source of both documents coupled with the allegation that the first document was false and should not have accepted the statement that both documents were genuine without hearing evidence.

### **The Hearing in the Upper Tribunal**

11. At the hearing before me, there was no appearance by or on behalf of the claimant. I was satisfied from inspection of the file that the claimant and his solicitors had been informed of the time, date and place of the hearing, and that no good reason had been given for their non-attendance.
12. I also noted that standard directions had been sent to the claimant and his solicitors giving the claimant the opportunity to file a Rule 24 response; and informing the parties that they should prepare for the forthcoming hearing on the basis that, if the Upper Tribunal decided to set aside the determination of the First-tier Tribunal, any further evidence, including supplementary oral evidence, that the Upper Tribunal might need to consider if it decided to re-make the decision, could be so considered at that hearing.

13. Accordingly, I was satisfied that it was appropriate to proceed with the hearing of the appeal in the claimant's absence.
14. I drew Mr Tufan's attention to the fact that the version of the document verification report in the Home Office bundle in my file did not have the attachment referred to in the document verification report. Mr Tufan produced the document verification report that was on his file, and I noted some differences. Mr Tufan's version contained additional information that was not in my version, but his version also omitted or redacted other items of information. For example, the name of the person verifying the document had been redacted. On the other hand, the person concerned gave a detailed account of his/her experience in examining and checking documents. Mr Tufan's version also clarified with whom the verifier had made contact. The verifier had made contact with the Customer Services and Government Business Wing, Operations Group, at the National Bank of Pakistan Head Office in Karachi.
15. Mr Tufan's version also contained the attachment previously referred to, which is an exchange of emails. The verifier sent an email to the National Bank of Pakistan Head Office asking them to verify the details of the claimant's account number 6533-2 purportedly held by him at the Sargodha branch. The email response was as follows:

Dear recipient, on the basis of examination of the bank statement/document offered by your office by the branch concerned/branch manager, I confirm that the a/c is not genuine/fake. Best regards [name redacted] Customer Services and Government Business Wing, Operations Group, NBP head office, Karachi.

### **Reasons for Finding an Error of Law**

16. The decision of the First-tier Tribunal was vitiated by procedural unfairness for two reasons. Firstly, as at the date of the hearing before Judge Smith, the claimant had not provided the original letter from the bank, although this had been promised. What had been provided under cover of the letter from the claimant's solicitors was only a copy, and so it had inherently less probative value than the original letter, which presumptively would have been put in the post on 13 June 2014, and so should have been available by the date of the hearing on 1 July 2014. Secondly, and more importantly, the copy letter of 13 June 2014 emanated from precisely the same source as the earlier bank letter which had been verified as false: namely an unidentified manager of the Sargodha branch; and, as the judge appreciated, the Secretary of State had not had the opportunity to respond to the evidence tendered by the claimant, as the evidence had been served late.
17. For the above reasons, I find that the decision of the First-tier Tribunal is vitiated by a material error of law such that it should set aside and re-made.

### **The Re-making of the Decision**

18. There were two items of evidence before me which were not before the First-tier Tribunal. The first is the document which purports to be the original letter from the branch manager dated 13 June 2014, and the second is a copy of Mr Tufan's version

of the document verification report, which has the email exchange which was missing from the Home Office bundle that was before the First-tier Tribunal.

19. The concern that I explored with Mr Tufan was whether, if I took into account his version of the document verification report in re-making the decision, the claimant would have an arguable case of procedural unfairness. Having reflected on the matter, I find it would not be procedurally unfair for me to take into account Mr Tufan's version of the document verification report. There is no unfairness because the claimant and his solicitors were put on notice that they had to prepare for this hearing on the basis that, if the Upper Tribunal decided to set aside the determination of the First-tier Tribunal, any further evidence that the Upper Tribunal might need to consider if it decided to re-make the decision could be so considered at the same hearing. The claimant has declined the opportunity to comment on, or give oral evidence in rebuttal of, the additional evidence that was not available to the First-tier Tribunal.
20. I remind myself that the claimant was not bound to give oral evidence in support of his appeal. The burden has always rested with the Secretary of State to prove the allegation of dishonesty and deception through cogent evidence.
21. I find that the two versions of the document verification report that I have been shown are sufficient to discharge the burden of proof. The evidence reliably establishes that, upon enquiry of an authoritative source, namely the National Bank of Pakistan Head Office in Karachi, the claimant's asserted bank account number 6533/2 was confirmed to be fake. Although the claimant has produced the original bank letter dated 13 June 2013, this has no more inherent reliability than did the original bank letter. For both of them purportedly come from the same source, namely a branch manager who does not give his name.

### **Decision**

The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside and the following decision is substituted: the claimant's appeal against the refusal of leave to remain is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Monson

**30 October 2014**