



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/28793/2013

THE IMMIGRATION ACTS

Heard at Birmingham
(video link)
On 22 May 2014

Determination Promulgated
On 03 June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

MR MOHAMMED BAIG

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Khan, Ikon Law Solicitors
For the Respondent: Mr N Smart, Home Office Presenting Officer

DETERMINATION AND REASONS

1. Mr Mohammed Baig is a citizen of Pakistan and his date of birth is 20 June 1984.

2. The appellant entered the UK on 14 October 2004 having been entered a student visa until 30 November 2007. On 22 December 2007 he was granted leave to remain in the UK as a student until 31 October 2008. On 23 April 2009 he was granted leave to remain in the UK as a Tier 1 (Post-Study) Migrant until 23 April 2011. On 6 June 2011 he was granted leave to remain in the UK as a Tier 1 (General) Migrant until 6 June 2013.
3. The appellant made an application on 24 June 2013 for leave to remain as a Tier 1 (General) Migrant under the points-based system. This application was refused by the Secretary of State in a decision of 19 July 2013.
4. The application was refused by the Secretary of State because there was insufficient evidence to establish that the appellant could meet the maintenance requirements of the Immigration Rules (hereinafter "the Rules") (that he had £900 in his bank account for 90 consecutive days ending within 30 days of the application). The second reason for refusing the application was that there was no evidence to corroborate the appellant's previous earnings. The respondent took into account the bank statements from the Halifax bank, but noted that the appellant had not supplied bank statements between 16 October 2012 and 25 November 2012 which would corroborate the evidence of pay slips.
5. The appellant appealed against the decision of the respondent and his appeal was dismissed by a Judge of the First-tier Tribunal (herein after referred to as "FtT") following a hearing on 26 November 2013. The determination was promulgated on 9 December 2013. The FtT dismissed the appeal under the Rules and Article 8. The appellant applied for permission for leave to appeal which was granted by Upper Tribunal Judge Macleman in a decision of 9 April 2012. Thus the matter came before me.

The Hearing Before the FtT

6. The FtT found that the Halifax bank statements submitted by the appellant do not establish that he had sufficient funds to satisfy the maintenance requirements. The FtT went on to conclude that "the Halifax Bank statements do satisfy the issue regarding corroboration of his pay slip" (see [18]).
7. At the start of the hearing the appellant made an application for an adjournment. The FtT considered this and made the following findings:
 - "8. At the hearing the appellant made an application to adjourn this appeal hearing in order to await bank statements from abroad from the Standard Chartered Bank. He said that these were copies of those that he had already sent to the respondent with his application but it appeared that they had not considered them. He said that in order to get them they have to be authorised by the bank director who was on holiday. He said that the last contact he had with the bank was on 30.10.13. He said that he

needed time to get these statements from abroad and it was very difficult process. He said that it will show the bank balance for the maintenance is £3,000. I asked him why there was delay in getting his statement and he said that he had to learn the whole process. He sent them the papers on 18.8.13 and they said it had to be in a certain format. It made it hard as the originals are with the respondent. In September he sent the paperwork and he spoke to the director who said that he would get it done and he had spoken to the director who had said he would get it done. He last spoke to the bank on 30.10.13 when they said they would be sent in two weeks. He then said that he was certain that they would be here by the end of November”.

8. The FtT recorded at [9] and [10] that the adjournment request was opposed by the respondent and that the bank statements from Standard Chartered Bank were not with the appellant or in the respondent’s bundle.

The Evidence Before the First-tier Tribunal and Upper Tribunal

9. The respondent’s bundle is in two parts. It contains the application form which was completed by the appellant in which he indicates that he attached personal bank statements for a consecutive 90-day period. In addition there are copies of the appellant’s passport, the notice and grounds of appeal, pay slips and Halifax Bank statements. There was no Statement of Evidence from the appellant before the FtT.
10. The original grounds of appeal of 15 August 2013 (page 8 of 19 of the appeal form) read as follows:

“The bank statements from 16 Oct 2012 to 25 November 2012 were not submitted as an error from the bank. I have retrieved an original bank statement from my bank account already, to be able to corroborate from the original statement, to provide enough evidence that is required.

Maintenance funds were maintained in my account for the period specified, in personal savings.”

11. There is a letter from the appellant to the Tribunal which is undated but which was received on 21 November 2013. Attached to this letter are original Halifax Bank statements at relating to the period from 15 October 2012 to 23 November 2012. The letter states as follows:

“I am writing in regards to the submission of the documents that I have to order again new duplicates from abroad in case I cannot find the photocopies in the record (joint savings account access statements). In order to proceed with the case I am attaching the available documents.

As soon as the documents missing which are already on order again to be reissued are sent. They will be made available on expected date hopefully before 26 November.”

12. There is another letter from the appellant to the Tribunal which is dated 21 November 2013. However, it was not received by the Tribunal until 18 December 2013. This was not before the FtT. The letter attaches a document entitled the grounds of appeal to the Tribunal and it reads as follows:

- “• I object to the Home Office decision on earnings; bank statements were provided as per in the application as per Section 245CA(c) in a separate C4 size Tesco envelope glued under the main envelope.
- I object to the Home Office decision on maintenance funds I do comply with Section 245CA(e). Statements combined submitted Halifax Bank as a proof of statement for account 0946410 11-00-84 and Standard Chartered Bank account 08061462101 Mall Road, Rawalpindi. Pakistan. In a C4 envelope has enough to maintain £900 limit.

I can reassure there is evidence exist and will be submitted in the same C4 size Tesco envelope glued to the base; as soon as originals or duplicates are reissued with a bank’s stamps I will be available with on the Tribunal day, along with other documents.

Note: these documents were provided in application therefore must not be considered as fresh documents.

Assumptions in the wrong section in the form must be ignored, I can’t undo them ... there had been no error on the bank’s behalf must be removed ...”

13. There is an email from the appellant to the Tribunal of 22 November 2013 which reads as follows:

“Please find enclosed the documents and a letter, as soon as I get more documents I will bring them to the Tribunal before 26 or on the day of the hearing”.

It is not clear what documents were attached with this email but it is reasonably likely to have been the Halifax Bank statements and the undated covering letter referred to by me above at [11].

14. There is an appellant’s bundle prepared for the hearing before me with a covering letter of 20 May 2014. The bundle consists of 34 pages. There is document which is referred to as the grounds of appeal which argue that the appellant submitted the Halifax and the Standard Chartered Bank statements with his application. It is

argued that the Judge erred in failing to determine this issue. The documents were missing from the respondent's bundle which was incomplete. There were other documents missing from it. It is asserted that the Judge misunderstood the appellant's request for an adjournment it was based upon him being able to obtain a letter from Standard Chartered Bank and not the bank statements as these had already been submitted to the court on 21 November 2013 and with the application. In the grounds it is asserted that the question was not whether the evidence was admissible pursuant to Section 85A the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") but whether or not the statements from Standard Chartered Bank had been submitted with the application. In the bundle at pages 28 and 29 there is a statement from Standard Chartered Bank (Pakistan) Limited showing that the account holders are Shamim Ahmed Baig and Shahida Shamim Baig. At pages 31 and 32 there is another statement relating to the same account. The statements at pages 28 and 29 are dated 4 October 2013 and the statement at pages 31 and 32 is dated 7 February 2014. There is a document at page 34 dated 5 April 2013 which appears to be a duplicate and is a "balance certificate for visa purpose" which relates to the account with Standard Chartered. There is a document at page 30 which is "a balance confirmation and maintenance certificate" which appears to have been issued on 23 January 2014 which again relates to the account with Standard Chartered but at the top of the document three names are shown namely the account holders and that of the appellant.

Conclusions

15. The FtT did not make a finding whether the appellant had submitted a complete set of bank statements as he was asserting in oral evidence. In my view this is an error of law that is such that I set aside the decision pursuant to Section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and I went on to remake the decision pursuant to Section 12(2)(b)(ii) of the 2007 Act. Both parties agreed that should the decision be set aside there would be no need for a rehearing.
16. In my view the appellant's evidence and the presentation of his case is unimpressive and lacking in credibility. I find that he did not submit sufficient evidence with his application. He did not submit the bank statements from Standard Chartered and the statements which he submitted relating to his Halifax Bank account were not complete. I do not accept that the respondent's bundle is incomplete. I find that what is in the respondent's bundle accurately reflects the evidence submitted by the appellant. The evidence was insufficient which led to his application being refused.
17. The appellant's case before the FtT was that he had submitted the statements from Standard Chartered with his application, but he does not assert this in the original grounds of appeal, but raised it at the hearing. There was no witness statement before the FtT in which this was asserted. There is nothing in the application form itself or indeed a covering letter which would amount to cogent evidence to support the appellant's assertion that he had submitted the bank statements from Standard Chartered. He first raised this issue in a document entitled grounds of appeal which

was attached with the letter to the Tribunal which appears to be dated 21 November 2013 but for one reason or another was not received by the Tribunal until 18 December 2013 (after the date of the hearing before the FtT). The appellant's case is that he had to make contact with the bank again in Pakistan in order for them to reissue copy statements and that these were obtained and submitted to the Tribunal on 21 November 2013 (the originals having been submitted with the application and mislaid by the respondent). This is not credible and I do not accept his evidence.

18. I find that the documents pertaining to Standard Chartered were not before the decision maker or the FtT. I do not accept that they were sent to the Tribunal with any of the correspondence from the appellant. I find that the first time the statements have been produced by the appellant was in the appeal bundle which was prepared for the hearing before me of 20 May 2014. There is no cogent evidence that the statements were submitted at any time before this. (I note that the bank statements at pages 31 and 32 of the appellant's bundle were issued on 7 February 2014 and could not have been submitted with the letter of 21 November 2013.) That the respondent accepted that the appellant had earned a certain amount during the relevant period does not lead me to infer that there were additional documents submitted by the appellant and omitted from the respondent's bundle.
19. The appellant accepted in the original grounds of appeal that he had not submitted bank statements from 16 October 2012 to 25 November 2012. In my view he was clearly referring to the Halifax Bank statements. I find that the appellant submitted the missing Halifax Bank statements with the undated letter to the Tribunal which was received on 21 November 2013
20. The FtT recorded the appellant's application for an adjournment at [8]. The appellant now appears to be saying that he had asked for an adjournment in order to obtain the letter (at page 30 of the appellant's bundle) and not in order to obtain bank statements because he had already submitted these with his letter of 21 November 2013 (and indeed his application). This is wholly lacking in credibility. It is very clear to me that the appellant applied for an adjournment in order to obtain the bank statement from Standard Chartered because he had not to date submitted these. The FtT made a clear and detailed record of the application and there is no reason to conclude that it is inaccurate.
21. The appellant is not able to satisfy the maintenance requirement of the Immigration Rules. The Judge failed to engage with the appellant's evidence; however, in my view the evidence before the decision maker was an incomplete set of Halifax Bank statements which did not establish that he would satisfy the maintenance requirements of the Rules.
22. The FtT also fell into error in taking into account the Halifax statements which were submitted by the appellant post the date of the application which led to a finding that he had satisfied the requirements of the Rules in relation to previous earnings. I am unable to admit the statements in evidence pursuant to section 85A of the 2002

Act and the appellant does not satisfy the requirements of the Rules relating to previous earnings.

23. Mr Khan submitted that in the alternative the appeal should have been allowed pursuant to the policy on evidential flexibility. And he also referred to paragraph 245AA of the Immigration Rules. His submission is misconceived. Not only must it be considered in the light of **SSHD v Rodrigues [2014] EWCA Civ 2**, but what Mr Khan appears to be asking me to do is find that the appellant should benefit from evidential flexibility in the event that his account is found to be wholly lacking in credibility. It is not the appellant's case that the documents were missing or in the wrong format. His evidence is that the documents as required were submitted with the application and I do not accept this. In any event I cannot see how paragraph 245AA could assist the appellant in relation to the bank statements from Standard Chartered Bank. There was no reason why the decision maker would have been aware from the appellant's application that he had a bank account with Standard Chartered Bank. I also note that the bank statements are not in the appellant's name and the document on which the appellant now seeks to rely (page 30 of his bundle) does not establish that he has access to the funds in the bank account.
24. There was no challenge to the decision of the FtT to dismiss the appeal under Article 8 and in my view there is no reason to go behind his findings and conclusion in relation to this.

The Decision

25. The appeal is dismissed under the Immigration Rules.
26. The appeal is dismissed under Article 8.

Signed Joanna McWilliam

Date 3 June 2014

Deputy Upper Tribunal Judge McWilliam