



IAC-TH-WYL-V1

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

Appeal Number: IA/31166/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 5th September 2014**

**Decision & Reasons Promulgated
On 24th November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

**MR MOHAMMAD MURAD HOSSAIN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Ms L Kenny (Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant's appeal against decisions to refuse to vary his leave and to remove him by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006 (the adverse decisions being made on 2nd July 2013) was dismissed by First-tier Tribunal Judge Mayall ("the judge") in a determination promulgated on 26th June 2014.

2. The judge determined the appeal on the basis of the documentary evidence before him, in the light of the appellant's indication in a fax sent to the First-tier Tribunal that he wished the appeal to be determined in this way.
3. The judge noted the Secretary of State's finding in her decision letter that the appellant had not submitted any bank statements, in spite of being given an opportunity to do so. In the notice of appeal, there was an assertion that such documents were submitted. The judge took into account the appellant's decision that he did not require a hearing, at which he might have given oral evidence and found that the appellant had not shown that the necessary bank statements were provided with his application and so the requirements of the rules were not met. The judge went on to consider Article 8 of the Human Rights Convention, taking into account guidance given in recent cases, including Nasim [2014] UKUT 00025. He concluded that the appellant's case contained no compelling circumstances and found that the human rights grounds of appeal were not made out.
4. The appellant applied for permission to appeal, contending that the judge erred in law by accepting the Secretary of State's claim that bank statements were not provided with the application or by 2nd July 2013, the time allowed by her for submitting the documents. The judge failed to consider documents which accompanied the notice of appeal, including a copy of a letter from a bank and a bank statement and a special delivery receipt, dated 1st July 2013. This showed that bank statements were sent to the respondent and received by the Home Office on 2nd July 2013. The judge failed to consider material evidence. His Article 8 assessment was clouded by his finding that the requirements of the rules were not met.
5. Permission to appeal was granted on 21st July 2014 on the basis that it was arguable that an error had resulted from an apparent failure to make findings regarding evidence served with the notice of appeal.
6. In directions sent by the Principal Resident Judge, the parties were advised that they should prepare for the Upper Tribunal hearing on the basis that if an error of law were found and the decision fell to be remade, any further evidence could be considered at the hearing.

The Hearing

7. Notice of the hearing was sent to the appellant at the address he provided to the First-tier Tribunal on 15th April 2014. This same address appeared in his application for permission to appeal, dated 10th July 2014. There was no appearance by him and enquiries revealed that no message had been left. I was satisfied that notice of the hearing had been properly served on the appellant at the address he provided and that it was just to proceed in his absence. There was no application for an adjournment and nothing to suggest that the position would be any different on another day.
8. Ms Kenny said that the decision of the First-tier Tribunal contained no material error of law. The judge did not refer to the special delivery receipt slip or documents

which accompanied the notice of appeal but there was no error as, in fact, no bank statement meeting the requirements of the rules was made available by the appellant, in support of his application. The document the appellant drew attention to in his application for permission to appeal, and which he described as a bank statement, was in fact a "Statement of Account". This was apparently issued by the NCC Bank Ltd in Dhaka. The document included an "Account opening date" of 21st May 2013 and referred to a period of time beginning on that date and ending on 26th June 2013. All the document showed was a cash deposit, made on 21st May 2013, in the sum of 1,100,000 taka. The document merely recorded the deposit and gave the balance. The other document the appellant referred to was a letter from the bank addressed "To Whom it May Concern". This came from an unidentified person, described as an "Authorized Officer", purporting to certify that the appellant had an account, described as a "Saving Deposit (SB) Account", with a credit balance of 1,100,000 taka, as at 26th June 2013. Whether the documents were considered separately or together, the evidence did not show that the appellant held the cash for the required minimum period of 28 days. The statement did not show the closing balance or indeed any transactions and the letter did not show the balance in the account at any time before 26th June 2013.

9. Even if the evidence did arrive with the Secretary of State and even if it had been considered, the same conclusion would have been reached. The appellant had not shown that he was in possession of the minimum amount of £1,600 for a period of 28 consecutive days. He was not entitled to the points claimed in the Maintenance (Funds) category. Similarly, the judge was entitled to conclude that the requirements of the rules were not met, even without expressly referring to the documents that the appellant relied upon.
10. Ms Kenny said that the Secretary of State also had a second point available. The special delivery receipt showed that the documents were sent on 1st July 2013. In the decision letter, the Secretary of State referred to a request sent to the appellant by e-mail, giving him a further seven days from 25th June 2013 for bank statements to be submitted, the deadline being 2nd July 2013. The special delivery receipt showed that the documents were "posted after last collection", at "22:50" on 1st July and so there would have been no collection until 2nd July and no receipt by the Secretary of State until the following day, 3rd July, in accordance with the special delivery scheme. It followed that the documents were not submitted in accordance with the time allowed by the Secretary of State.
11. So far as Article 8 was concerned, there was nothing of any substance in the appellant's case that the judge was required to deal with. The grounds of appeal to the First-tier Tribunal were formulaic and contained no details.

Conclusions on Error of Law

12. I am very grateful to Ms Kenny for her careful submissions, which I accept. The judge did not refer to documents accompanying the notice of appeal but, even supposing that the items referred to by the appellant in his application for

permission to appeal were properly before the judge, no material error is shown in the decision made. There is no need to repeat Ms Kenny's analysis of the two documents. It is clear that the statement of account is not sufficient to show that the appellant held the minimum level of funds for the required period of 28 consecutive days because it recorded only a deposit of cash on 21st May 2013. The letter from the bank, not a bank statement as such, adds nothing substantial to the case because it records the balance of the funds in the account as at 26th June 2013 but not at any time beforehand.

13. The special delivery receipt also shows that it is more likely than not that the documents were not received by the Secretary of State in the time allowed, so that she was entitled on 2nd July 2013 to find that bank statements had not been submitted. The date and time of the special delivery receipt is 22:50 on 1st July 2013 and the documents were "posted after last collection". Any items sent by the appellant would have been collected on 2nd July and delivered the following day. Even if received within the time allowed, the documents relied upon by the appellant were in any event insufficient to show that he met the requirements of the rules.
14. So far as Article 8 is concerned, the grounds of appeal to the First-tier Tribunal are indeed formulaic. There is an assertion that the appellant provided "All the required documents in support of his application before the date of decision" and the following on human rights: "The decision is unlawful as it is a clear breach of the appellant's rights afforded by the ECHR". There is no detail of any ties established by the appellant in the United Kingdom, following his arrival in the autumn of 2009. The judge's conclusion that the appellant could not succeed on Article 8 grounds was manifestly open to him on the limited evidence available.
15. No material error of law has been shown and so the decision of the First-tier Tribunal, dismissing the appeal, shall stand.

DECISION

The decision of the First-tier Tribunal contains no material error of law and shall stand.

ANONYMITY

There has been no application for anonymity at any stage in these proceedings and I make no direction on this occasion.

Signed

Date **21st November 2014**

Deputy Upper Tribunal Judge R C Campbell