



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/34204/2013

THE IMMIGRATION ACTS

Heard at Field House
On September 17, 2014

Determination Promulgated
On September 18, 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR WASEEM TARIQ

Respondent

Representation:

For the Appellant: Ms Everett (Home Office Presenting Officer)

For the Respondent: Ms Victor-Mazeli, Counsel, instructed by Shahzad Solicitors

DETERMINATION AND REASONS

1. Whereas the respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellant, born March 4, 1988 is a citizen of Pakistan. On March 10, 2010 he entered the United Kingdom as a tier 4

student with leave to remain until July 30, 2012. Shortly before he was due to sit his exams his college's license was revoked and he obtained permission to study elsewhere. On July 30, 2012 he lodged an application for further leave but on October 5, 2012 his second college's licence was revoked and on February 20, 2013 the respondent wrote to him advising him of this fact and allowing him up to 60 days to find an alternative Sponsor. He submitted a further application on April 23, 2013 but this was ultimately refused on August 5, 2013 on the basis the maintenance requirement had not been met.

3. On August 19, 2013 the appellant appealed under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 arguing the Rules had been met.
4. The matter was listed before Judge of the First-tier Tribunal Whalan (hereinafter referred to as "the FtTJ") on June 2, 2014. The respondent was unrepresented. In a determination promulgated on July 2, 2014 he allowed the appeal under the Immigration Rules and made a fee award in favour of the appellant.
5. The respondent appealed that decision on July 11, 2014. Permission to appeal was granted by Judge of the First-tier Tribunal Brunnen on July 22, 2014. He found the FtTJ may have erred for the reasons set out in the grounds.
6. The appellant was in attendance at the hearing.

SUBMISSIONS ON ERROR OF LAW

7. Ms Everett relied on the grounds of appeal. She accepted there had been no challenge to the FtTJ's finding the bank statement had been submitted but argued that the FtTJ should have refused the appeal because there was no letter of authority from the appellant's father as required by Appendix C of the Immigration Rules. She noted a letter had been sent to the appellant on April 24, 2013 requesting this document and evidence of funds and this suggested that the respondent conceded evidential flexibility was considered. However, there had been no response to this letter hence the refusal letter. She invited me to find a material error.
8. Ms Victor-Mazeli stated that the FtTj had decided the case based on the evidence before him. The appellant had neither received the second page of the letter dated February 20, 2013 nor the letter dated April 24, 2013. If he had he would have provided all that had been requested. She accepted that at the

date of application/decision/hearing the appellant had not submitted the letter of authority from his father albeit he had the document now. She stated that as he had never received the letter then he should, as had been acknowledged by the respondent, been given an opportunity to furnish the document. She asked me to uphold the decision or alternatively require the respondent to apply the evidential flexibility test.

ERROR OF LAW ASSESSMENT

9. This is an appeal by the respondent. The respondent had been unrepresented at the original hearing and I am satisfied that if she had been represented two important matters would have been highlighted:-
 - a. The absence of the letter of authority as set out in Appendix C section 13 and 13B.
 - b. A letter on the respondent's files indicating that a letter had been sent to the appellant requesting further documents.
10. The decision in Qureshi [2011] UKUT 00412 makes it clear that where there has been a variation substituting a new college, it is the date of the most recent variation for the purposes of paragraph 1A(c). In other words the appellant had to demonstrate when he submitted his application in April 2013 that he satisfied the Rules.
11. The FtTJ accepted in paragraph [10] of his determination that a relevant bank statement had been sent but made no finding on the letter as authority as required by section 13B(b) of Appendix C.
12. I am satisfied that this application did not satisfy the Immigration Rules because the letter had never been submitted. Ms Victor-Mazeli did not seek to persuade me that this aspect of the Rules had been met. There is therefore a material error.

REMAKING OF DECISION

13. The evidence I had was that the respondent accepted evidential flexibility was being considered and it was the appellant's failure to respond that led to the refusal letter. The appellant, through his counsel, confirmed the letter of April 24, 2013 had never been received and he was only aware of it, for the first time, today.

14. I am satisfied there are strong arguments for the appellant to be given time to submit his evidence as this is something the respondent had clearly been considering and this is case where evidential flexibility should be applied. Ms Everett had accepted the missing documents fell within the respondent's evidential flexibility policy and as I accept the appellant had never received a request for the missing documents I concluded that it would be unfair if he was not given such an opportunity.
15. I set aside the decisions to allow the appeal and to make a fee award. I am satisfied that this is an appropriate case to remit back to the respondent to consider evidence that fell within their own rules on evidential flexibility.

DECISION

16. There is a material error of law and I set aside the original decision.
17. The appeal is allowed under the Immigration Rules to the limited extent that the application remains before the respondent for a lawful decision to be made having given the appellant a reasonable period of time to provide the letter of authority and any other document that it indicated should be forwarded in a letter dated April 24, 2013. I am satisfied, on the balance of probabilities, that the appellant had not received the letter.
18. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Dated:

A handwritten signature in black ink, appearing to read "SPALIS", with a horizontal line underneath.

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I do not make a fee award, as the respondent was entitled to reject the application in the light of the apparent failure to respond to the letter dated April 24, 2013.

Signed:

Dated:

A handwritten signature in black ink, appearing to read "SPAL" with a flourish underneath.

Deputy Upper Tribunal Judge Alis