



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/37543/2013

THE IMMIGRATION ACTS

Heard at Bradford  
On 24<sup>th</sup> March 2014

Determination Promulgated  
On 7<sup>th</sup> April 2014  
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Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

NOUMAN AZAM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Cole of Parker Rhodes Hickmotts, Solicitors  
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Malik made following a hearing at Manchester on 3<sup>rd</sup> January 2014.

## Background

2. The Appellant is a citizen of Pakistan. He applied for leave to remain in the UK as a Tier 4 (General) Student Migrant but was refused leave to remain on that basis on 27<sup>th</sup> August 2013 under paragraph 245ZX(d) with reference to paragraph 1A of Appendix C of the Immigration Rules.
3. Under the Rules the Appellant was required to demonstrate that he had been in possession of the required level of funds, namely £800 for each month of his course - £1,600 for 28 days prior to the application.
4. The Appellant submitted with his application his latest Halifax Bank statements, dated 14<sup>th</sup> May 2012, which showed a closing balance of £6,092.75. He also submitted a letter from the Halifax dated 1<sup>st</sup> June 2012 confirming that the balance as at 1<sup>st</sup> June 2012 was £5,992.75.
5. The judge recorded that the Appellant produced at the hearing his original bank statements for the months from 7<sup>th</sup> March 2012 to 29<sup>th</sup> June 2012. It was stated on his behalf that he has not been able to provide the bank statements with his application because they were not ready, which is why he went to his bank and provided the letter confirming the balance in his account.
6. The judge wrote as follows:

“Section 19 of the UK Border Act 2007 restricts the evidence an Appellant can rely on at appeal to that which was provided to the decision maker. It applies to appeals against immigration decision refusals under the PBS. As such, as the evidence of the Appellant's further bank statements were not before the original decision maker, I am unable to consider them in this appeal.

Whilst the balance of the applicant account as at the date of decision was 5,992.75, far in excess of the funds required, and the bank statements evidence that he did have the requisite funds for a 28 day period preceding his application, as this was not before the original decision (as stated above in line with Section) I am unable to consider this new evidence. As such the appeal is bound to fail.”

7. The Appellant sought permission to appeal in reliance on the Court of Appeal decision in Rodriguez (Flexibility policy) [2013] UKUT 00042.
8. The matter came before Judge Davey who refused permission in respect of the grounds by reference to the Court of Appeal decision in Rodriguez and Others [2014] EWCA Civ 2. However Judge Davey considered that the removal decision under Section 47 of the Immigration, Asylum and Nationality Act 2006 may have been unlawful and on that basis granted permission to appeal.

9. On 10<sup>th</sup> February 2014 the Respondent served a reply submitting that the judge did not err by not considering the Section 47 issue. The decision was made after 8<sup>th</sup> May 2013 and was lawful.
10. The Appellant renewed his Grounds of Appeal arguing that the appeal should have been allowed by reference to paragraph 245AA of the Immigration Rules and because his case could be distinguished from the Court of Appeal decision in Rodriguez.
11. Unfortunately that application did not come to light until the day of the hearing itself.
12. I considered the application in chambers and told the parties of my preliminary view that there was merit in the renewed grounds, thus giving Mr Diwnycz an opportunity to file a reply.
13. After considering the matter Mr Diwnycz acknowledged that there was considerable merit in the grounds and said that he would leave the decision in my hands.
14. I provided both parties with a copy of my decision granting permission to appeal on the renewed grounds.

### **Findings and Conclusions**

15. Under paragraph 245AA
  - “(a) where part 6 or any appendices referred to in part 6A stated that specified documents must be provided, the UK Border Agency will only consider documents that have been submitted with the application, and will only consider documents submitted safer the application where subparagraph (b) applies.
  - (b) the subparagraph applies if the applicant has submitted:
    - (i) the sequence of documents and some of the documents in the sequence have been omitted (for example if one bank statement from a series is missing).”
16. This is exactly what happened here. There was a sequence of documents but one bank statement was missing because it was not available as at the time of the application. When the Respondent considered the application in August 2013 and it became clear that the sole reason for not it not being granted was that one bank statement in a series was missing, the Respondent should have contacted the Appellant to request the correct document.
17. The failure of the Respondent to apply paragraph 245AA of the Immigration Rules renders her decision not in accordance with the law and the Immigration Rules.

18. The appeal is therefore allowed to the extent that the Respondent is required to consider the missing bank statement. Since it does not appear to be a challenged that the maintenance requirements are satisfied, it is likely that a grant of leave will be made.

**Decision**

19. The Immigration Judge erred in law. Her decision is set aside. The following decision is substituted. The Respondent's decision is not in accordance with the law and must be remade.

Signed

Date

Upper Tribunal Judge Taylor