



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/39501/2013

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 2 July 2014

Determination Promulgated  
On 31 July 2014

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

ADNAN LIAQUAT

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr M Schwenk of Counsel

For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, Adnan Liaquat, was born in 9 April 1985 and is a male citizen of Pakistan. The appellant appealed against the decision of the Secretary of State (not the Entry Clearance Officer as indicated in paragraph 2 of the First-tier Tribunal

determination) dated 13 September 2013 refusing his application to vary his leave to remain in the United Kingdom as a Tier 1 (General) Migrant. A decision was also made to remove him by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. The appellant appealed against the immigration decision to the First-tier Tribunal (Judge Shimmin) which, in a determination promulgated on 12 February 2014, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant had entered the United Kingdom in September 2008 as a student. His leave to remain had been varied until 31 August 2013. On 24 August 2013, he had applied to vary his leave to remain. The appellant was awarded the requisite number of points under Appendix A of the Immigration Rules save for that relating to "Previous Earnings"; the appellant required 20 points and he was awarded 5 points. As a consequence, his application was refused. The relevant section of the refusal letter of 13 September 2013 reads as follows:

You have claimed points for earnings of £36,323.80.

As evidence of your previous earnings from Sunny Gifts Ltd you have provided Lloyds TSB Bank statements, NatWest Bank statements, dividend vouchers and wage slips.

We are however unable to take into account £3,454.12 of these earnings as shown on your wage slips as this figure represents income which has been paid to you in cash, which is considered to be unearned income, as specified under Appendix A of the Immigration Rules.

We have therefore only been able to award points for £25,500 of dividend income, and £3,218.80 gross income earned by wages, totalling £28,718.80 which we are able to corroborate into your bank account (*sic*).

You have therefore been awarded 5 points for Previous Earnings under Appendix A.

3. The appellant claims that, between 15 August 2012 and 5 April 2013, he received an additional sum of £7,605.00 as a director of Sunny Gifts Ltd. It is this part of his earnings which is not accepted by the respondent because the payments had been made in cash. (See the refusal letter quoted above - "*...has been paid to you in cash, which is considered to be unearned income as specified under Appendix A of the Immigration Rules*"). Judge Shimmin dealt with these matters at [21] - [24]:

21. Mr Paramor [the Presenting Officer] argues that the following paragraph of the Immigration Rules is relevant:

'19-SD (a) as specified documents in paragraph 19(a) are:

- (i) formal pay slips covering the whole period claimed, which must be on the company headed paper or stamped and signed as authenticated by the employer;

- (ii) *personal bank statements showing the payments made to the applicant.'*

He submitted that the appellant cannot show all his earnings in the personal bank statements.

- 22. Mr Ali, for the appellant, submitted that paragraph 26 did not say that cash payments were excluded. Paragraph 26 reads as follows:

*'26. Earnings do not include unearned sources of income such as:*

(a) ...

(b) *any other allowances, and is part of the applicant's remuneration package and specified in the applicant's pay slips.'*

He submitted that paragraph 26(b) was not clear on the subject.

- 23. I find I prefer Mr Paramor's argument. The wording of paragraph 19(a)(i) and (ii) it is clear that the appellant needs to produce both wage slips and personal bank statements reflecting the payments in the wage slips.
- 24. I find that paragraph 26 is not relevant in the instant case as it deals with unearned sources of income.

- 4. The text of paragraph 19-SD(a) (specified documents) has altered since the date of the decision but the parties agreed that the text of the paragraph provided to the Upper Tribunal by Mr Schwenk was the correct text in force at the date of application and decision. The appellant's argument is that he was required by paragraph 19(a) to "*provide at least two different types of specified documents in paragraph 19SD(a) from two or more separate sources as evidence for each source of previous earnings*". He says that he provided wage slips (i); an official tax document produced by the relevant tax authority showing earnings on which tax has been paid or would be paid in the tax year (iv); an accountant's letters ("*if the application is claiming points for self-employed earnings.*") (iv); business bank statements showing the payments made to the application (ix). He asserts that the First-tier Tribunal and the respondent misinterpreted the paragraph by (a) treating cash payments made to the appellant as a director of Sunny Gifts Ltd has "*unearned income*" and; (b) by requiring cash wages paid to the appellant to be corroborated by entries on the appellant's personal bank statements.
- 5. With regards to this latter "*requirement*", there is a document at C4 of the bundle which has bears the heading of the UK Border Agency and shows the various payments made to the appellant over the relevant period. The document has two columns, one entitled "*wage slips - ? acceptable?*" and "*second form - corroborate?*". It is not entirely clear how this schedule came to be produced but both representatives agreed that it emanated from the UK Border Agency and I agree with Mr Schwenk that the document seems to indicate that the UKBA decision maker was seeking to corroborate cash payments made to the appellant in respect of his

employment by reference to some other form of evidence (whether that be bank statements or otherwise).

6. In my opinion, the form of paragraph 19-SD which applied to this appellant did not require payments shown on formal pay slips (sub-paragraph (i)) necessarily to be corroborated by personal bank statements. The Rule makes it clear that “at least two different types of specified documents” should be provided; the Rule did not provide (save in relation to requirement (x)) for one particular form of evidence to be corroborated by another particular form of evidence. Sub-paragraph (x) provides that “if the appellant provides a combination of bank statements and a letter or invoice summary from his accountant, he must also provide any invoices generated during the period for which the earnings are being claimed.” I find that the appellant was simply required to provide any two different types of specified document not, as Judge Shimmin found, that he needed “to produce both wages slips and personal bank statements reflecting the payments in the wage slips.” The only indication at all that that interpretation of the Rule may be correct is the use of the definite article “the” sub-paragraph (ii). However, I do not find that the use of the definite article in that sub-paragraph is, in itself, sufficient to require an applicant to provide both formal pay slips and bank statements in respect of the same payments. Had the Rule intended that requirement, then I find there would have been some expression indicating conjunction between sub-paragraphs (i), (ii) or the requirement would have been set out as in the form of sub-paragraph (x).
7. Further, I find that I do agree with Judge Shimmin (and Mr Ali, who appeared for the appellant before the First-tier Tribunal) in finding that cash payments are not excluded by paragraph 26 (unearned income). The refusal letter was, therefore, inaccurate where it asserted that cash payments would be “considered to be unearned income, as specified under Appendix A...”
8. An issue also arises regarding the appellant’s submission of his tax return for the year ended 5 April 2013. Judge Shimmin excluded consideration of that document [20] because it had not been submitted with the application and he found that he could not, in consequence, take it into account. However, it is agreed by the parties that, although the tax return was not submitted with the application, it was submitted to the respondent before she took the immigration decision (see *Nasim and others (Raju: reasons not to follow?)* [2013] UKUT 610(IAC)). In any event, I find, for the reasons given above, that the appellant did provide “at least two different types of specified documents at paragraph 19 ... SD-(a) from two or more separate sources as evidence for each source of previous earnings.” Consequently, the disputed sum of £7,605 should have been taken into account in the calculation of his previous earnings. Had it been taken into account, it would have carried the appellant beyond the threshold of £35,000 required for an award of 20 points. It follows that Judge Shimmin erred in law by dismissing the appellant’s appeal and I set aside his determination. In the light of my findings, I have remade the decision and allow the appellant’s appeal against the immigration decision.

**DECISION**

The determination of the First-tier Tribunal is set aside. I have remade the decision. The appellant's appeal in respect of the Immigration Rules is allowed.

Signed

Date 28 July 2014

Upper Tribunal Judge Clive Lane