



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/46373/2013

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke
On 18th June 2014

Determination Promulgated
On 25th July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

KASHIF HUSSAIN SHAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Hussain, of Counsel instructed by One Stop Immigration Services
For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. On 9th April 2014 Judge of the First-tier Tribunal Lloyd gave permission to the appellant to appeal against the decision of Judge of the First-tier Tribunal Heynes who found that the appellant had no valid appeal against refusal of leave as a Tier 1

(Entrepreneur). That was because he concluded that the appellant made his application for leave on 4th June 2013 when his leave had expired on 19th May 2013 even though the appellant claimed he had submitted an application in time although that had been rejected by the respondent for non-payment.

2. Judge Lloyd gave permission because he thought it arguable that the judge had failed to decide the validity issue by considering *Basnet (Validity of application – respondent)* [2012] UKUT 113 (IAC) which placed the burden on the respondent to show that a fee had not been paid.
3. In a response sent on 9th May 2014 the respondent expressed the view that the judge had directed himself appropriately because the appellant had used a cheque to pay for the application but *Basnet* was concerned with credit card payments.

Error on a Point of Law

4. At the hearing before me Mr Harrison produced a copy of the respondent's letter of 30th May 2013 which rejected the original application which had been made by the appellant on 17th May 2013, two days before his leave to remain expired on 19th May 2013. He conceded that the letter gave no indication as to the manner in which the appellant had made his payment and accepted that the subsequent letter from the Home Office dated 17th January 2014 confirmed that the appellant had paid by credit or debit card the details of which had been provided with the application. Thus, he accepted that, in the absence of information from the respondent to show precisely how the fees transaction had been effected and that the correct card number had been used to request payment, the respondent had not complied with the requirement set out in *Basnet* for her to show that it was the appellant's fault that payment had not been made.
5. Mr Hussain confirmed that reliance was placed upon the respondent's failure to show that the appellant was at fault yet had not done so. The application made by the appellant on 17th May should therefore have been regarded as valid and his appeal should have proceeded.
6. Having considered the information provided by the respondent I reached the conclusion that the decision made by Judge Heynes in the First-tier Tribunal was in error and now give my reasons for that conclusion. The judge does not show that he fully investigated the circumstances of the appellant's payment with the application made on 17th May 2013. That application was not accompanied by a cheque, as stated by the judge, but was paid for by debit or credit card as the respondent now acknowledges. This is clear from the document at page 26 of the latest appellant bundle received at the Stoke Hearing Centre on 13th June 2014 although the full card details given by the appellant on that form have been obliterated. In the circumstances the judge should have considered the guidance set out in *Basnet* requiring the respondent to show that the application was not accompanied by information sufficient to enable a fee to be taken by means of the appellant's bank card. The appellant claims that there were sufficient funds in his bank account to meet the card transaction at all times and that is also a factor which the judge should have considered if he had drawn the right conclusion about the method of payment.

7. The error is such that the decision should be re-made. It appears to me that the appropriate course of action is for the decision on this issue and, if appropriate, the appeal as a whole to be dealt with by the First-tier Tribunal which will have to make findings afresh on all issues.

DIRECTIONS

1. The appeal is remitted to the First-tier Tribunal to consider the validity of the appeal applying the guidance of the Tribunal in *Basnet* then, if appropriate, to consider the substantive appeal against the decision of the respondent taken on 15th October 2013.
2. The resumed hearing will take place at either Nottingham or Stoke Hearing Centres.
3. The appellant's representatives should indicate whether or not they intend to rely upon the bundles of documents received by the Tribunal on 13th and 18th June 2014 in respect of the preliminary and substantive issues to be dealt with before the First-tier Tribunal. In the event that further documentation is to be supplied then consolidated bundles should be filed and served.
4. The appeal must not be heard before Judge of the First-tier Tribunal Heynes.

Signed

Date

Deputy Upper Tribunal Judge Garratt