



IAC-FH-AR-MP-V1

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

Appeal Number: IA/51935/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 22 October 2014**

**Decision & Reasons
Promulgated
On 31 October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**ABID KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Haji of Counsel

For the Respondent: Mr Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Abid Khan, is a citizen of Pakistan born on 18 July 1981. He appealed against the respondent's refusal dated 4 October 2014 to refuse him leave to remain as a Tier 1 (Entrepreneur) under the PBS as he failed to satisfy paragraphs 245DD(b) and Appendix A. That was because he had failed to submit the specified evidence as listed under paragraph 41 of Appendix A.

2. The appellant's appeal against the respondent's refusal was allowed by First-tier Tribunal Judge Oakley (the judge) in a determination promulgated on 7 July 2014. The grounds claim that the judge misdirected himself because the bank letter the appellant produced, fell within the parameters of paragraph 245AA, that is, that the document was in the wrong format. See **Akhter (Paragraph 245AA: wrong format) [2014] UKUT 00297 (IAC)**, **Fayyaz (Entrepreneurs: paragraph 41-SD(a)(i)-"provided to" [2014] UKUT 00296 (IAC)** and **Durrani (Entrepreneurs:bank letters; evidential flexibility) [2014] UKUT 00295 (IAC)**.
3. First-tier Tribunal Judge T R P Hollingworth in granting permission to appeal on 11 September 2014 said this: "The grounds raised by the respondent were all arguable, in particular that inadequate reasons had been given by the judge for reaching his decision."

Submissions on Error of Law

4. There was no skeleton argument from either side. Mr Bramble asked me to consider how the judge approached paragraph 245AA. He produced a copy of the Rules relevant at the date of the decision which was 4 September 2013. At [13] of the determination the judge set out paragraph 245AA incorrectly as he included "[iv] a document does not contain all the specified information." That provision had been deleted from the Rules in force as of the date of the decision.
5. Mr Bramble referred me to [17] of **Akhter** which I will set out in full:

"[17] We proceed to re-make the decision of the FTT. The sole question is whether the Secretary of State's refusal decision was not in accordance with the law by reference to paragraph 245AA of the Immigration Rules, which applied at the time when the appellant's joint application was determined. We have reproduced paragraph 245AA in [14] above. It provides that UKBA 'may' request the applicant to supply 'the correct documents' in any of three cases, that is to say where:

- (a) a document has been (or documents have been) omitted from a sequence of documents; or*
- (b) a document is in the wrong format; or*
- (c) a copy, rather than original, document has been furnished.*

See sub-paragraph (b)."

6. [18] of **Akhter** considered the material defects in the appellants' application which were that the bank letter did not state the names of the appellants and did not specify the postal address, landline phone number and any e-mail address of the account holders. Paragraph 245AA(b)

should be accorded its ordinary and natural meaning such that it was not engaged in those particular appellants' circumstances. The Tribunal considered that an application suffering from those shortcomings, did not fall within any of the three categories set out in paragraph 245AA(b) such that the appellants could not invoke paragraph 245AA in support of a contention that they should have been given an opportunity to rectify the deficiencies in their applications. That being the case, the judge did not err in the manner in which he approached the material before him.

7. Ms Haji submitted that the appellant met the requirements of the Rules. She took me to 41-SD which describes the specified documents in Table 4 and paragraph 41 in terms of whether an applicant has access to funds. There was a letter from Bank Al- Habib. It was from the appropriate officer of that institution on official headed paper. The judge referred to that documentation at [15] and [16] of his determination. Bank Al-Habib was listed at Appendix P of the Immigration Rules as a financial institution whose financial statements were accepted. See pages 15-16 of the appellant's bundle.
8. The appellant could show he had the specified documents under 41-SD. Ms Haji submitted that **Akhter** was dealing with quite a different situation where the bank letter was not acceptable because the entrepreneurial team were not mentioned and there were no contact details for the third party. **Fayyaz** referred to at [13] of **Akhter** made clear that "*provided to*" must take into account the whole of the context which included Appendix A, Table 4, which repeatedly employed the terminology "*access to*" a minimum sum of money. Further, the language at paragraph 41(b) and (c) included "*permission to use the money to invest in a business in the UK*" and "*transferable to the UK*". In paragraph 41(d) the phraseology was "*available to*". The Tribunal was satisfied that the words "*provided to*" denoted "*available to*".
9. Ms Haji submitted that all of the information was there, it was just put in a different manner. It was true that 245AA(iv) the judge referred to, was not in force at the time of the decision but the guidance on PBS evidential flexibility version 2.0 (see page 24 of the appellant's bundle) was in force, valid from 9 May 2013. That guidance was before the judge which is why he said that the required particulars could have been requested. See [14] of the determination.
10. Ms Haji also asked me to take into account documentation at pages 27-30 of the determination showing that the respondent had applied her policy to other appellants but not to this appellant.

Conclusion on Error of Law

11. The judge found that the bank letter did not confirm the details required, that is, it did not confirm that Bank Al-Habib was regulated by the appropriate regulatory body and it did not confirm the amount of money being available to the appellant from the third party's funds, could be

transferred to the UK. He found under 245AA that the respondent could and should have requested other documents from the appellant. See [12]-[14] of the determination. I find the shortcomings in the appellant's application did not fall within any of the three categories of paragraph 245AA I have set out at [5] above such that the judge erred in finding that paragraph 245AA(b)(iv) was relevant. I will consider whether that error was material.

12. The judge also found at [16] of the determination that the respondent would have been aware that the bank was a financial institution whose financial statements were accepted by the respondent.
13. Paragraph 41 provides that an applicant will only be considered to have access to funds if the specified documents in paragraph 41-SD are provided. Inter alia, 41-SD provides that specified documentation must be produced to show evidence of the money available to invest. The appellant comes within 41-SD(a)(i). The letter must inter alia:

“(5) confirm that the institution is regulated by the appropriate body.”

Ms Haji would have me accept that because Bank Al-Habib was contained within a list of financial institutions whose financial statements were accepted (see page 16 of the appellant's bundle) that would suffice, particularly because she submitted that the appellant could meet the other requirements of paragraph 41-SD(a)(i) (1)-(11).

14. Appendix P at page 15 sets out “lists of financial institutions that do not satisfactorily verify financial statements, or whose financial statements are accepted”. It might be that Bank Al-Habib was a financial institution whose financial statements were accepted by the respondent but I find that did not match the requirement of 41-SD(a)(i)(5). There was no evidence before the judge or before me to show that Bank Al-Habib was regulated by the appropriate body.
15. In such circumstances, there is no necessity for me to go on to consider (11) but which I will address nevertheless. Each letter (from financial institutions holding the funds) must:

“(11) confirm that **if** (my emphasis) the money is not in an institution regulated by the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA), the money can be transferred into the UK.”

16. The letter from Bank Al-Habib dated 15 July 2013 that Ms Haji relies upon, merely said that the money was available. It does not say it could be transferred into the UK and I do not accept that the third party declaration at page 13 of the appellant's bundle which said “the whole amount is available and will remain available until its transfer to the UK

remedied the defect as it was not a letter from the financial institution holding the funds anticipated by 41-SD(a)(i).

17. In such circumstances, I do not accept that **Durrani, Fayyaz** or **Akhter** assisted the appellant. Construed reasonably and sensibly in its full context, the appellant did not produce documentation sufficient to satisfy 41-SD(a)(i). It was not as Ms Haji submitted that all the information was there, just in a different manner.
18. Taking into account my findings at [11]-[17] above, I do not accept the policy guidance PBS version 2.0 assisted the appellant in terms of **Rodriguez [2014] EWCA Civ 2**. Further, I do not accept that the documentation at pages 27-30 of the appellant's bundle which Ms Haji said was an indication of how the respondent dealt with missing documentation in other cases, was evidence that such additional documentation should have been requested from the appellant; each appeal is inevitably case specific in that regard. There was no obligation on the respondent to point out the defects in the application or to seek additional information or documentation to remedy such defects.

Conclusion

19. I find the judge materially erred in law. I set aside the original decision and remake it by dismissing the appeal.

Decision

20. Appeal dismissed.

No anonymity direction is made.

Signed

Date: 28 October 2014

Judge Peart

Deputy Upper Tribunal Judge Peart

TO THE RESPONDENT FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 28 October 2014

Judge Peart

Deputy Upper Tribunal Judge Peart