



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

Appeal Number: IA/53164/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 2 October 2014**

**Determination Promulgated
On 24th Oct 2014**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SYED MURTAZA HUSSAIN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Manna, Counsel, instructed by Abbott Solicitors

For the Respondent: Mr P Nath, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by a citizen of Pakistan against the decision of the First-tier Tribunal dismissing his appeal against the decision of the respondent to refuse to give him leave to remain as a Tier 1 (Entrepreneur) Migrant under the points-based system. There was only one substantial point taken against him and it was that he had not produced the required evidence in the required form about his access to capital.
2. The First-tier Tribunal decided that the document relied on by the appellant did not satisfy the requirements of the Rules and consistent with that finding did not trouble to decide if the document had ever been produced. The difficulty is that I cannot understand the finding that the document produced “does not satisfy any of the requirements listed” at Appendix C1(B) of HC 395.


3. Mr Manna went through that Rule with me while we looked at the document and it seems absolutely plain that it does satisfy the requirements of the Rules. I cannot make sense of the finding to the contrary. Mr Nath agreed that the document appeared to satisfy the requirements of the Rules and I find that it plainly does. It follows that the disputed document, if it had been provided at the right time, would certainly have made a difference to the outcome of the appeal and therefore it is a material error on the part of the judge not to have decided if in fact it was sent with the application as the appellant claims, or on some later occasion as could conceivably be the case.
4. I rehearse here the arguments for it being produced with the application. It is, I find, clear that the appellant asserted when he made his application that an appropriate bank statement accompanied the application form. That is not evidence that he did. It is conceivable that the appellant was being dishonest. It is conceivable that he made an honest mistake and thought that he had sent something that he had not sent.
5. What is absolutely plain is that on the application form where the appellant was required to identify documents that score him points under "Section 7 (Maintenance)" he said that one of the documents provided was a bank statement and a similar consistent claim was made also under Section 7 where under a list of items provided there is reference to a "bank letter" and also a "bank statement".
6. I find it deeply regrettable that the Secretary of State did not give a clearer reason for refusing the application. I look at the notice of refusal such as it is and I read under the part of the form devoted to Appendix C:

"You have not provided any of the acceptable evidence specified under paragraph 1B of Appendix C of the Immigration Rules to demonstrate that you have been in possession of at least £900 of available funds for a consecutive 90 day period ending no more than 31 days before the date of your application in order to meet the maintenance requirements."
7. I do not know if the Secretary of State means that no evidence at all was provided on the point or if the Secretary of State means that the evidence that was provided was deficient in some way because it did not meet all of the requirements of the Rules. This, I think, is a standard paragraph. Certainly I recall seeing it before and it really would be very helpful if the Secretary of State would think carefully about not using standard paragraphs that are ambiguous. It would be better to say what she meant, even if making the position clear took a little longer.
8. It is also a matter of surprise to me that the Secretary of State did not seem to do anything when presented with an application form saying that the bank statement was provided before concluding that no acceptable evidence was provided. It would have been at least wise to have said that the application form referred to a bank statement but that no bank statement was provided, if such be the case, or do something else in the decision to show that the form had been read and the deficiencies made known.

9. I think it is particularly important in the age of the points-based system where the appeal system does not generally provide an opportunity to remedy deficiencies in the evidence that it is clear beyond all argument what actual evidence was before the Secretary of State. Whilst no doubt applicants could keep meticulous copies or have the contents of the posted bundle witnessed by a reliable independent party or something of the sort, I think that is a counsel of perfection that is inappropriate in a system which ought to be intelligible by an informed and interested user.
10. It follows that the evidence before me suggests that a document was sent and this point is not really countered by the ambiguous words in the refusal notice which leave me uncertain about what exactly is said to have been wrong.
11. Mr Manna has invited me to allow the appeal outright. He says, with some justification, that if I am persuaded that the document was probably sent there is really nothing else to discuss. Mr Nath for the Secretary of State says that the document has never been checked by the Secretary of State and Mr Manna's riposte is that is the fault of the Secretary of State. Certainly it has been available to the Upper Tribunal since September and it is the appellant's case it was made available in the First-tier Tribunal. It ought to have been dealt with before now.
12. However it has not been considered and giving the Secretary of State a short period of time when she can make further remedies if she is so minded will not really cause any great inconvenience to the appellant. I have already indicated that I do not think there will be any need for a further hearing unless the Secretary of State comes up with some credible and sensible objection to the documents produced.
13. I therefore direct that the Secretary of State produces any comment or submission on the documents from the appellant no later than 4.0 pm on 16 October 2014 and after that time, at a time convenient to me, but I hope very soon after it, I will look at the file and either determine the appeal finally or give further directions.
14. I record here that I said to Mr Nath that although it is open to the Secretary of State to apply for more time I do not expect to give more time unless quite exceptional and compelling circumstances were advanced. I also made it plain that I had no intention of giving these directions in writing. They were made orally in the hearing room and were noted carefully by Mr Nath. If they are not heeded by the Secretary of State I will assume she has no interest in doing anything.
15. I returned to the file on 22 October 2014. There was nothing to indicate that the Secretary of State had sent in further material. My clerk contacted the Secretary of State who confirmed that nothing had been sent. I see no point in waiting any longer.
16. In the absence of any contrary evidence I find it at least probable that the appellant sent then document that he has long claimed to have sent and that his application satisfies the rules.

17. The First-tier Tribunal erred by deciding perversely that a disputed document did not satisfy the requirements of the rules and further erred by failing to decide if the document was produced with the application.
18. I resolve both issues in the appellant's favour. I set aside the decision of the First-tier Tribunal and I allow the appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 23 October 2014