



**Upper Tribunal  
(Immigration and Asylum Chamber)  
Number: IA/09305/2014**

**Appeal**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On June 24, 2015**

**Determination  
Promulgated  
On June 26, 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR ASAD ZAMAN KHAN  
(NO ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr Parkinson (Home Office Presenting Officer)  
For the Respondent: Mr Jafar, Counsel, instructed by Lee Valley  
Solicitors

**DETERMINATION AND REASONS**

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.

2. The Appellant is a citizen of Pakistan. The appellant entered the United Kingdom as a student under Tier 4 with leave valid from August 4, 2011 until July 25, 2012. On July 25, 2012 he submitted an application to remain here as a Tier 4 student but this was deemed invalid. The application was re-submitted on August 31, 2012 but the respondent refused this application on January 24, 2012 under paragraph 245ZX(d) HC 395.
3. The appellant appealed that decision on February 17, 2014 under section 82(1) of the Nationality, Immigration and Asylum Act 2002. The matter came before Judge of the First-tier Tribunal Copper (hereinafter referred to as the "FtTJ") on January 29, 2015 and in a decision promulgated on February 10, 2015 he allowed the appeal under the Immigration Rules.
4. The respondent lodged grounds of appeal on February 13, 2015 submitting the FtTJ had erred by accepting the affidavit as compliance with the Rules. Judge of the First-tier Tribunal Astles found there was an arguable error in law for the reasons raised.
5. The matter came before me on the above date and the parties were represented as set out above.
6. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 and I see no reason to alter that order

### **SUBMISSIONS ON ERROR IN LAW**

7. Mr Parkinson adopted the grounds of appeal and argued the FtTJ erred by allowing the appeal under the Rules. The appellant had failed to provide a mandatory document to prove relationship. He had produced a birth certificate at the hearing but as this was a points-based application it was quite properly not taken into account. However, the FtTJ erred by finding the Rules were met based on a statement filed by the appellant's mother. This was not a court document and even if it was construed to be one the Rules only provided for a court document to prove legal guardianship. This was not a legal guardianship case and there was an error in law and the decision should be remade and the case dismissed.
8. Mr Jafar opposed the application. He argued the FtTJ had rejected his own submissions but had allowed the appeal for the reasons he gave in paragraph [42] onwards of his determination. The FtTJ was satisfied the document was a court document and it contained the required information and as the respondent had considered this document with the application the FtTJ was entitled to allow the appeal as he did.


9. Mr Parkinson referred me to paragraph 13B(a)(iii) of Appendix C of the Immigration Rules that makes clear that the court document had to be a document that named his legal guardian. The affidavit was a statement made by the appellant's mother and it was not a court document that named her as his legal guardian. The specified evidence required by paragraph [13] and [13B] of Appendix C was not provided with the application and the appeal should have been dismissed.
10. I reserved my decision.

### **CONSIDERATION AND FINDING ON MATERIAL ERROR OF LAW**

11. In considering whether there has been an error I remind myself of the grounds of appeal and the reason permission was given.
12. Paragraph 13 and 13B of Appendix C set out what documents are needed to prove funds are available and who is able to provide those funds. It is common ground that the appellant did not submit his birth certificate with his application.
13. The FtTJ was aware of the law as he set the law out in paragraph [26] of his determination and he then set out the various arguments. Mr Jafar's argument argued that the passport and other documents contained the relevant information and the FtTJ accepted part of his argument but rejected his submission at paragraph [41] that the passport satisfied the Rules.
14. Mr Parkinson is correct when he submits the Rules have to be complied with. The appellant has to provide either his birth certificate or a certificate of adoption or a court document naming his legal guardian.
15. Mr Jafar accepts the appellant did not provide either his birth certificate or a certificate of adoption but submits the FtTJ's findings in paragraphs [42] and [43] explained why he found the Rules were met.
16. Having considered the Rules and evidence I find there is a material error. The affidavit is not a court document that names his mother as his legal guardian. The affidavit is simply a statement signed on oath by the appellant's mother. The court have played no role in this document and the FtTJ erred in finding this was a court document and further that paragraph 245AA of the Rules provided any assistance. The appellant had the document that was required and failed to submit it as required by the Rules. The evidence he adduced did not meet the mandatory requirements of the Rules and the respondent was under no obligation to seek any further document. The affidavit could never have been court document or a replacement for the appellant's birth certificate.

17. For these reasons I find there was a material error. I indicated to Mr Jafar that if there were an error then in remaking the decision I would have to dismiss the appellant's appeal.

**DECISION**


18.  There was a material error. I set aside the FtTJ's decision and I remake it by dismissing the appeal under the Immigration Rules.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT  
FEE                      AWARD**

 I make no fee award as the appellant's appeal was dismissed.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis