



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/13281/2014

THE IMMIGRATION ACTS

Heard at Field House
On 14th January 2015

Decision & Reasons Promulgated
On 11th February 2015

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

MUHAMMAD ARSHAD
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance or representation

For the Respondent: Miss A Holmes, Home Office Presenting Officer

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Ferguson made following a hearing at Birmingham on 1st September 2014.

Background

2. The Appellant is a citizen of Pakistan. He entered the UK in December 2011 as a student and made an in-time application for leave to remain as a Tier 1

(Entrepreneur). The application was refused on 19th June 2013 under paragraph 322(1A) of the Immigration Rules, because the Appellant had relied on a deception in the application and under the Immigration Rules for Tier 1 (Entrepreneur) applicants because he had not provided satisfactory evidence that he had access to £200,000, by the provision of specified documents, to invest in business in the UK.

3. The Appellant appealed on the grounds that he had provided genuine documents and, as he had submitted his application on 12th December 2012 he had access to the £100,000 route. UKBA should have asked him to provide any missing evidence.
4. The judge dismissed the Appellant's appeal and said that the Appellant had failed to discharge the burden on him to show that the decision of the Respondent was not in accordance with Paragraph 322(1A).
5. The Appellant appealed against the decision on the grounds that the Respondent had not provided any evidence that the bank statements were not genuine.
6. Permission to appeal was granted by Judge Levin on 2nd December 2014. The judge said that, given the burden of proof was on the Respondent to show that the bank statement was false, the judge's decision was materially flawed.
7. On 11th December 2014 the Respondent submitted a reply, accepting that the onus was on her to prove the allegation but stated that in this appeal the Appellant had done nothing to rebut the allegation or even attend the hearing and in those circumstances the judge was entitled to reach the conclusion that he did.

The hearing

8. There was no appearance by the Appellant. I am satisfied that he was properly served with notice. I note that he did not appear at the hearing before the original judge, who recorded that the representatives had been unable to contact him and were without instructions.
9. There is no reason given for the Appellant's absence today.
10. In the light of the above I decided to proceed with the appeal.
11. Miss Holmes accepted that the judge had got the burden of proof wrong but provided for me a verification report which states that the bank statement from the National Bank of the Punjab was not issued by them, and it was verified as false. In these circumstances she submitted that the decision was properly made.

Findings and conclusions

12. I am satisfied that the Respondent has discharged the burden of proof upon her to show that the Appellant has relied on a false document and used deception in the application. The document verification report is absolutely clear.

13. The decision letter of 19th June 2013 records that the Appellant made an application on 17th December 2012 for leave as a Tier 1 (Entrepreneur). I note in the grounds that the Appellant says that he submitted the application on 12th December 2012. Miss Holmes gave me a copy of the application which, although dated as signed on 12th December, was date stamped as received by the Respondent on 18th December 2012.
14. Applications received on or after 13th December 2012 from applicants wishing to switch from Tier 4 (General) Student to Tier 1 (Entrepreneur) were no longer able to access the £100,000 route. There is nothing in the evidence before me, save for the Appellant's word, to show that this application was received before 13th December. He is a person who has been prepared to use deception in the past.
15. I find that it was on the balance of probabilities that the application was received on or after 13th December 2012 and therefore the Appellant is no longer able to access the route under which he made the application.
16. That being the case the Respondent was entitled not to request additional documentation or to exceptionally consider the application under the provisions of paragraph 245AA because addressing the omissions would not lead to a grant of leave.
17. The original decision of the judge is set aside since he erred in law in misapplying the burden of proof. However it is remade in the same terms and the appeal is dismissed.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed

Date 11th February 2015

Upper Tribunal Judge Taylor