



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

Appeal Number: IA/19329/2014

**THE IMMIGRATION ACTS**

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

**Decision & Reasons  
Promulgated  
On 7 January 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HANBURY**

**Between**

**MITUN CHANDRA DAS  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss Ahammed

For the Respondent: Mr Whitwell, a Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. There is before me an appeal by the Secretary of State against the decision of Judge of the First-tier Tribunal Herbert OBE who decided to allow the appellant's appeal to the extent that he purported to remit it back to the respondent for reconsideration. The respondent had decided to reject the appellant's application under the points-based system as a Tier 4 (General) Student and for a biometric residence permit on the

grounds that the relevant points had not been achieved because the bank statement submitted did not cover the correct period. The application was submitted on-line on 21 March 2013 and the basis of such an application was that hard copy documents were subsequently to be submitted and considered by the Secretary of State before making a decision.

### **The hearing**

2. Miss Ahammed, who appeared for the appellant at the Upper Tribunal hearing and appeared at the First-tier Tribunal, points out that a number of aspects of the application process are confusing, difficult and even potentially unfair. She does point out the guidance which is contained within the respondent's bundle on the application form. This includes (at page 2 of the application form) guidance to the effect that documents are to be submitted within fifteen days of submitting the application form.
3. It was also pointed out that the application was confusing. The appellant said that under paragraph 245AA it was open to the Secretary of State to request documents which had not been submitted in their entirety so as to complete the sequence, e.g. of bank statements, if there were a missing page or pages. It might be appropriate in certain circumstances for the Secretary of State to take those steps rather than simply rejecting the application, as had occurred.

### **Discussion and conclusions**

4. The grounds of appeal are very succinct. They state simply that at paragraph 12 of the determination the Immigration Judge applied the posting rule which is contained within 34G (i) of the Immigration Rules when he should have applied the on-line application Rule, which is contained in subparagraph (iv) of the same Rule.
5. The Secretary of State makes the point that Immigration Judge was plainly wrong to apply the posting rule. He should have considered only the evidence submitted in support of the application regardless of the fact that he was also required to provide hard copies of documents supporting his application. As Mr Whitwell pointed out at the hearing, Section 85A(4) of the Nationality, Immigration and Asylum Act 2002 states that, where the application is under the points-based system, the Tribunal may only consider evidence if it was sent at the time of the making of the application.
6. In this case the appellant was required to produce bank statements showing that he had the required level of funds to cover a 28 day period from 22 February 2014 to 21 March 2014, not the period specified by the Immigration Judge in his determination which covers the period 4 March 2014 to 4 April 2014. The Immigration Judge appears to have stated the correct period in paragraph 4 of his determination but then become confused by the "14 days" allowed to submit original documents.

7. It is regrettable that this error crept into his determination, particularly since both parties were represented before the First-tier Tribunal and had a duty to correctly state the law. It is hardly surprising that the appellant was confused if an experienced Immigration Judge was confused and the legal representatives for both parties were potentially confused by these Rules. However, I can find nothing in the guidance on the form which could have led him to believe that a different period than the 28 day period referred to was the relevant one and clearly a failure to provide the required bank statement would not fall within any evidential flexibility policy.
8. This appears to be an error of law which is material to the determination and the fact that the appellant would now satisfy the requirements if he were to make a fresh application is not a matter which I can take into account. It is a matter for the respondent to consider whether to allow the appellant to remain outside the rules or require the appellant to make a fresh application.
9. Whereas I sympathise with the appellant's predicament, I consider that there is no alternative to finding that a material error of law has been established. In particular, the Immigration Judge failed to apply the correct 28 day period for consideration of the bank statements supplied and those should have gone from the period of 22 February 2014 to 21 March 2014, not the dates stated above.
10. I substitute the decision of this Tribunal, which is that the appeal against the Secretary of State's refusal of the application is dismissed.

### **Notice of Decision**

The appeal by the Secretary of State is allowed. A material error of law is found. The decision of the Upper Tribunal is substituted which is to dismiss the appeal against the Secretary of state's decision to refuse further leave to remain.

No anonymity direction is made.

Signed

Date 5 January 2015

Deputy Upper Tribunal Judge Hanbury

### **TO THE RESPONDENT** **FEE AWARD**

I have allowed the Secretary of State's s appeal and therefore there can be no fee award.

Signed

Date 5 January 2015

Deputy Upper Tribunal Judge Hanbury