



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

Appeal Number: IA/38554/2014

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 1 July 2015

Promulgated

On 7 July 2015

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

KAZI WAZEDAR RAHIM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr V Makol, Legal Representative, Maalik & Co Solicitors
For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

There is no need for any order restricting publication of any facts relating to this case and I make no order.

1. The appellant is a citizen of India and his date of birth is 3 May 1981. He made an application on 24 July 2014 to vary his leave as a Tier 1 (Entrepreneur) Migrant under the points-based system (PBS). The respondent refused the application. It became apparent at the hearing

before me that there were two decisions; one dated 18 September 2014 (“the first decision”) another dated 24 September 2014 (“the second decision”).

2. The appellant appealed against the decision and his appeal was dismissed by Judge of the First-tier Tribunal Woolf in a decision that was promulgated on 30 January 2015 (following a hearing on 2 January 2015). Permission to appeal against this decision was granted to the appellant by First-tier Tribunal Judge Levin in a decision of 13 April 2015.
3. At the hearing before Judge Woolf the appellant did not attend despite having requested an oral hearing. He made an application to adjourn claiming that he was too unwell to attend. On 10 December 2014 he was admitted to St. Thomas’ Hospital as a result of severing one of his fingers. Surgery followed and he was then discharged into the care of his GP. The judge found that there was no evidence that the appellant was unfit to attend court. He found that the injury to his finger would not prevent him from attending court.
4. The judge took into account that there had in fact been two previous applications for an adjournment on the basis that the appellant could not find representation to cover the hearing on 2 January. Both applications had been refused by a duty judge who decided that the appellant could represent himself. Judge Woolf took into account that the notice of the hearing had been sent to the appellant on 4 November 2014 and considered that he had had ample time in which to obtain representation.
5. The injury to the appellant’s finger was no doubt very serious. I have taken into account the photographic evidence produced by the appellant. However, the injury occurred on 10 December 2014 and the hearing before the First-tier Tribunal was on 2 January 2015. It may well have been difficult for the appellant to prepare a witness statement in the light of the injury, but it was open to the judge to refuse the application for an adjournment on the basis that there was no evidence that the appellant was unable through ill-health to attend the hearing and that the appellant could represent himself. No error of law arises from the judge’s decision to refuse to adjourn the hearing.
6. The appellant’s grounds of appeal before the First-tier Tribunal maintain that he had sent documents with his application which had not been considered by the respondent. The appellant did not produce a witness statement and nor did he specify in the grounds the documents he referred to.
7. At the hearing before me it came to light that the judge did not have a complete respondent’s bundle. Mr Nath indicated that there were additional documents submitted by the appellant in support of his application relating to paragraph 41-SD(e)(iii)(1) of the rules, which were not in the respondent’s bundle which had been filed with the Tribunal and which was before the judge. The issue under 41-SD (e) (iii) (1) was raised in both the first and second decision and the judge found that the

appellant was unable to meet this requirement of the rules, but he did not have before him all of the documents that the appellant had submitted with his application. There was an issue raised in the first decision only which related to a UK bank account. It is clear that Judge Woolf considered the first decision only and that one of the reasons he dismissed the appeal related to the issue of the UK bank account (see [14]) which was not raised in the second decision. It was the appellant's case that he had prepared the appeal on the basis of the second decision and was not aware of this issue and that he had in any event submitted the required documents.

8. The judge was not in any way assisted by the parties in this case. He had an incomplete picture of the application made by the appellant and he considered the appeal against a decision which differs materially from a later decision made by the respondent. The failure of the appellant to comply with directions and to attend the hearing further compounded matters. Notwithstanding this, the defects identified above amount to procedural irregularities which amount to a material error of law.
9. Mr Nath was unaware of the second decision and was not able to confirm on which decision the respondent seeks to rely. There was another problem with the decision of the First-tier Tribunal. I observed that the neither of the respondent's decisions or indeed the determination make it clear under which paragraph of 41-SD the issues relating to corporation tax and the UK bank account relate and the parties were unable to assist me.
10. I set aside the decision of the First-tier Tribunal to dismiss the appeal under the Rules pursuant to Section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. I remit the case to the First-tier Tribunal in accordance with Section 12(2)(b)(i) of the 2007 Act . It was not possible to obtain a date of hearing at the First-tier Tribunal but a notice of this will be issued to the parties in due course.

Directions

- (1) The respondent is to serve and file a complete bundle not later than fourteen days before the substantive hearing.
- (2) The respondent is to identify the correct decision under appeal not later than fourteen days before the substantive hearing.
- (3) The respondent is to serve and file the relevant version of the rules and identify the rules in issue in this case not later than fourteen days before the substantive hearing.
- (4) Both parties are referred to the standard directions which were issued to them on 4 November 2014. These still stand. Both parties must ensure that all evidence relied upon is filed and served not later than fourteen days before the substantive hearing.

- (6) It is expected that the appellant produces a witness statement which makes it clear which documents he states were sent with his application and which were not considered by the respondent.

No anonymity direction is made.

Signed Joanna McWilliam

Date 3 July 2015

Upper Tribunal Judge McWilliam