



IAC-FH-CK-V1

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

Appeal Number: IA/06464/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 23 February 2016**

**Decision &
Promulgated
On 8 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

**MR AMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

Representation:

For the Appellant: Mr I Jarvis, Home Office Presenting Officer

For the Respondent: Mr S Kumar, Legal Representative, Capital Solicitors LLP

DECISION AND REASONS

1. I refer to the Appellant as the Secretary of State and the Respondent as the Claimant in this appeal. The Claimant applied for further leave to remain as a Tier 4 (General) Student on 30 August 2014 and his application was refused by the Secretary of State on 3 February 2015. The application was refused on the basis that the Claimant failed to meet the requirements of paragraph 245ZX(d). He was not awarded the points for maintenance because he had submitted a bank letter in the name of

his parent or legal guardian but it was not accepted that this was evidence of funds because he had provided no evidence of relationship to this person.

2. The Claimant appealed that decision and that appeal was dealt with on the papers by First-tier Tribunal Judge Holder. In a decision promulgated on 1 September 2015 he concluded that the Claimant had in fact demonstrated that Vijay Laxmi was his mother. He came to this conclusion on the basis of documentary evidence in the form of an ID card bearing the name of the mother and an affidavit from her. He noted that the Claimant had never had a birth certificate. He took into account the documents and concluded that the relationship was proved.
3. The Secretary of State sought permission to appeal that decision and the grounds set out that the First-tier Tribunal Judge did not direct himself in relation to the requirements of Rule 13(ii) of Appendix C and it was only by reference to that Appendix that the Claimant could satisfy the requirements of 245ZX(d). The required evidence was set out in paragraph 13B(a) and was limited to a birth certificate; an adoption certificate or a court document naming the applicant's legal guardian. It is asserted in the grounds that the affidavit submitted was not a court document as required. It is also said that the Judge was in error in failing to reconcile or address the fact that there was a discrepancy with regard to the date of birth on the Claimant's passport and the Election Commission card.
4. Permission was granted by First-tier Tribunal Judge Frankish on the basis that the First-tier Tribunal had ignored the statutory evidential requirements under 13B (a) for the purposes of meeting 245ZX(d), namely that a birth or adoption certificate or other court document must be submitted. Furthermore there was a contradiction in the dates of birth between two documents.
5. The appeal now comes before me and I conclude that having regard to the requirements of Appendix C, paragraph 13 that the Claimant did not provide the requisite documentation with his application. The forms of evidence that were provided were not sufficient to meet the requirements of the Rules and the First-tier Tribunal was in error in concluding that they were. As the Appellant was relying on funds from his parent and the parent had provided consent that the funds may be used, he was required to provide a birth certificate or a Court document naming his legal guardian and a letter confirming the relationship and that consent was given to use their funds to study in the UK (paragraphs 13 (ii) and 13B (a) and (b) of Appendix C). There is no discretion under Appendix C to allow any other form of evidence to be adduced. The requirements are strict and in circumstances where an appellant is unrepresented he is required nevertheless to produce the correct documentation. If the evidence does not meet the requirements of the Rules that is the end of it.

6. The decision of the First-tier Tribunal contained a material error of law. I therefore set it aside. This is a points-based application and therefore governed by s85A of the 2002 with regard to admissible evidence. In **Ahmed and Another (PBS: admissible evidence) [2014] UKUT 365 (IAC)** the Tribunal held that the purpose of section 85A Exception 2 is quite clear. Where a Points Based application is made and refused, the assessment by the Judge is to be of the material that was before the decision-maker rather than a new consideration of new material. In other words the appeal if it is successful is on the basis that the decision-maker with the material before him should have made a different decision, not on the basis that a different way of presenting the application would have produced a different decision.

7. It is clear from the discussion above that the evidence of his relationship with his mother did not meet the requirements of Appendix C of the Immigration Rules and the appeal must therefore be dismissed.

Notice of Decision

The decision of the First-tier Tribunal did contain a material error of law and I set it aside.

I re-make the decision dismissing the appeal.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge L J Murray