



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

Appeal Number: IA/39183/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 11 December 2015**

**Decision & Reasons Promulgated
On 6 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

**MOHAMMED MAKSUDUR RAHAMAN MOMIN
(No anonymity order made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms T. Kabir, instructed by Thamina Solicitors

For the Respondent: Mr S. Kola, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh born on 5 December 1988. This appeal arises from the respondent's decision, dated 19 September 2014, whereby the appellant's application for leave to remain as a Tier 4 (General) Student under the Points Based System was refused. The respondent also made a decision to remove the appellant by way of directions under section 47 of the Immigration Asylum and Nationality Act 2006.

2. Two reasons were given for the refusal. The first was that there was not a valid Confirmation of Acceptance for Studies ("CAS"). It seems that during the intervening period between the appellant making the application and the respondent making a decision the institution at which the appellant intended to study ceased to be listed as a Tier 4 sponsor. The second reason for refusal was that the respondent determined the appellant had submitted a bank statement which the issuing authority confirmed was false and as such should be refused under paragraph 322(1A) on the basis of having used deception in the application.
3. The appellant appealed and his appeal was heard by First tier Tribunal ("FtT") Judge Callender Smith. The FtT dismissed the appeal. In a brief decision, the FtT stated that the appeal had been adjourned about five months earlier because the Document Verification Report (DVR) produced by the respondent was not complete. When the case resumed the full DVR had still not been served. The FtT found that it could not rely on the DVR because it was vague and incomplete. It then stated that it would have expected the appellant to produce a letter from his bank attesting to the genuineness of the account and that the burden of proof was on the appellant. The FtT concluded:

"I take the view that he [the appellant] has failed to satisfy that burden - by showing that he did have a genuine bank account because that was a live issue in this appeal..."
4. At the commencement of the hearing Mr Kotas stated that the appellant now had evidence about the bank statement and the parties had conferred and reached an agreement, the terms of which were as follows:
5. If the appeal is allowed to the limited extent that it is remitted to the respondent to consider the appellant's new evidence relating to the validity of the appellant's bank account, the Secretary of State will, after considering the new evidence about the bank statement: (i) if it is satisfied the bank statement is genuine grant 60 days to the appellant to obtain a new CAS; or (ii) if it is not satisfied the statement is genuine issue a new decision refusing the application.
6. I asked Ms Kabir if she was in agreement with what Mr Kotas had described and she said that she was.
7. In light of the agreement between the parties described above, the appellant's appeal is allowed to the limited extent that I find the respondent's decision of 19 September 2014 was not in accordance with the law and the appellant's application for leave to remain as a Tier 4 (General) Student remains outstanding for a lawful decision to be made such decision to be made in accordance with the agreement reached by Mr Kotas and Ms Kabir as set out in paragraph 5 of this decision.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 30 December 2015