



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/39801/2014

THE IMMIGRATION ACTS

Heard at Field House  
On 14<sup>th</sup> December 2015

Decision & Reasons Promulgated  
On 20<sup>th</sup> January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR MD MAHAMUD AL-ISLAM  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None  
For the Respondent: Miss J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. This is an appeal and challenge against a First-tier Tribunal decision, promulgated on 23<sup>rd</sup> March 2015, dismissing the appellant's appeal against the Secretary of State's decision to refuse to vary the appellant's leave to remain.
2. An application for permission to appeal was refused by a First-tier Tribunal Judge who stated that the appellant had not supplied any evidence to support his claim. That application, however, was renewed to the Upper Tribunal and granted by an Upper Tribunal Judge who stated that there was a fax on file from the representative dated 12<sup>th</sup> February 2015 to change the appeal to an oral hearing and that fax was on

file but there was no evidence to show the Tribunal took further action to respond. It was arguable that it was incumbent on the Tribunal to allow the appellant a fair opportunity to put his case before the First-tier Tribunal.

3. I will set out the background to the appeal. The appellant is a citizen of Bangladesh born on 20<sup>th</sup> August 1986 and he made an application on 31<sup>st</sup> July 2014 for a Tier 4 General Student visa. That application was refused on 18<sup>th</sup> September 2014 under paragraph 245ZX specifically paragraph 245ZX(d). The respondent also made a decision to remove the appellant by way of directions under Section 47 of the Immigration and Asylum Act 2006.
4. The Secretary of State stated that the appellant had not been awarded 10 points for maintenance funds as the closing balance of his bank statements submitted in support of his application was dated 18<sup>th</sup> July 2014 and he needed to show evidence of maintenance of 28 days from 21<sup>st</sup> June 2014 to 18<sup>th</sup> July. The amount he was required to show was £9,180 but on 15<sup>th</sup> July 2014 he only could demonstrate that he had £7,500.14.
5. His appeal was decided on the papers on 20<sup>th</sup> March 2015 by First-tier Tribunal Judge Grimes who dismissed the appeal both under the Immigration Rules and on human rights grounds.
6. Judge Grimes stated at paragraph 7 that the appellant “has not contended that his removal would breach the European Convention on Human Rights and there is nothing in the papers before me to indicate that he has established a private or family life in the UK such as to lead to a possible breach of Article 8 of the ECHR.
7. I note the appeal notice was dated 6<sup>th</sup> October 2014 and did not enclose any reference to human rights. The appeal was lodged by way of a covering letter from UK Immigration Consultants on 17<sup>th</sup> November 2014.
8. An application for permission to appeal was made on 8<sup>th</sup> April 2015 claiming that after receiving new instructions from the appellant the representative sent correspondence to the Tribunal on 12<sup>th</sup> February 2015 stating that the appellant wanted the appeal to be decided by way of an oral hearing, not on the papers, where he would have a better opportunity to provide evidence. This was said to have been sent by fax to the Tribunal on 12<sup>th</sup> February 2015 at 16.05. Since the request was submitted neither the appellant nor the representative received any reply from the Tribunal regarding the request and on 23<sup>rd</sup> March 2015 a determination was promulgated from the First-tier Tribunal without an oral hearing.
9. It was submitted that the First-tier Tribunal Procedural Rules had not been followed by the Tribunal and the appellant did not have an opportunity to have access to justice.
10. It was submitted that the Secretary of State did not consider paragraph 245AA and the applicant had provided all the requisite evidence to support his application except for part of a bank statement with regard to his maintenance funds.

11. At the hearing before me Miss Isherwood submitted that the appellant could not comply with the Immigration Rules.
12. The appellant attended and confirmed that there was one matter in issue in the appeal and that was the assessment of his ability to meet the financial requirements. He submitted that had the Secretary of State considered his funds from 14<sup>th</sup> July backwards he would have been able to comply with the 28 day period of the relevant funds. He had checked with his university and they had told him that his bank statements were in order. He stated that he had submitted the Barclay Bank statement with his name and address on because he thought that was the more appropriate document to submit to the Secretary of State rather than the mere printout which stopped at 14<sup>th</sup> July.
13. The appellant produced the bank statements to show what was before the respondent and this comprised a statement of 20<sup>th</sup> June to 18<sup>th</sup> July 2014. It is clear from the refusal letter that the statement considered by the respondent is that which ends on 18<sup>th</sup> July 2014. As at 15<sup>th</sup> July 2014 the appellant clearly held £7,514 in his account and this remained until 18<sup>th</sup> July 2014.
14. Further to Appendix C with reference to paragraph 245ZX 1A(a) the appellant must have the funds specified in the relevant part of Appendix C as at the date of the application. Further to Appendix C 1A(c) if the applicant is applying as a Tier 4 Migrant the applicant **must** have the funds referred to in (a) above for a consecutive 28 day period of time.
15. Further to 1A(h) the end date of the 28 day period would be taken as the date of the closing balance on the most recent of the specified documents (where specified documents from two or more accounts were submitted, this will be the end date for the account that most favours the applicant), and must be no earlier than 31 days before the date of the application.
16. There was no dispute that the appellant was required to show the sum of £9,180 but in line with the Immigration Rules the date for the purposes of the 28 day period would run backwards from 18<sup>th</sup> July 2015 as this is the statement that the appellant supplied to the respondent. For at least three days in this 28 day period the appellant was short of funds in the sum of £1,599.86.
17. I note that there was a request on file for the appellant to have an oral hearing and therefore there is an error to the effect that the appellant should have been afforded an oral hearing bearing in mind the representations made by the appellant's solicitors. At no point in his appeal nor in the letter of 12<sup>th</sup> February 2015 did the issue of human rights arise and from my analysis given above the appellant could not hope to succeed on the basis of the financial documents placed before the Secretary of State. At the hearing, I listened to his explanation and although there was a procedural error by the First-tier Tribunal to proceed by way of deliberation on the papers alone, I find that there was no substantive merit in the appellant's claim. I therefore find there was an error of law in the decision through the failure to afford the appellant an oral hearing but his physical attendance at the Tribunal could not assist his claim because it could not remedy the defects within the documentation

which were critical. There was no mileage in the argument that Paragraph 245AA could assist him. It was not the case that there was any documentation missing in a series (and therefore the case can be distinguished from **Mandalia v SSHD [2015] UKSC 59**), nor that the documentation was in the wrong format or was not original. There is purpose in the rules as framed to ensure that adequate financial arrangements are in place for study. Unfortunately the appellant could not comply with those requirements. I therefore remake the decision and dismiss the appeal.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Rimington

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

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Rimington