



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/04598/2013

THE IMMIGRATION ACTS

Heard at Field House
On 26th September 2013

Determination Promulgated
On 1st October 2013

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR MUHAMMAD SIDDIQUE
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant in person

For the Respondent: Mr E Tufan (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Appellant against a determination of the First-tier Tribunal (Judge Boyd) promulgated on 15th July 2013 by which he dismissed the Appellant's appeal against the Secretary of State's decision to refuse him leave to remain as a Tier 4 (General) Student Migrant.

2. The Appellant entered the UK as a student in May 2010 with leave until 30th August 2012. He applied in time for further leave to remain as a student. His application was refused, purely on financial grounds, on 28th January 2013. He appealed that decision.
3. The Appellant had elected and paid for his appeal to be dealt with on the papers. It was dealt with and dismissed in April 2013. That decision was however set aside under Rule 60 as the Appellant had not been notified that the case was to be decided or given the opportunity to adduce evidence. Thus the matter was placed before Judge Boyd as a paper case in July 2013.
4. In his determination Judge Boyd noted the Appellant had lodged a bundle of documents including bank statements. The Judge noted that the Appellant had only lodged copy bank statements in relation to his own bank account with Lloyds Bank and said that in any event those were not produced to the Secretary of State and so did not take them into account.
5. The Appellant argues that the statements were sent to the Secretary of State and the Judge of the First-tier Tribunal was mistaken about which documents were submitted.
6. It is the case that electing to have his appeal dealt with on the papers was a bad decision by the Appellant as it is far from clear from the file which documents were submitted to who and when. The Appellant says that his bank statement was sent to the Secretary of State with his application. I am satisfied that due to a mistake of fact the First-tier Tribunal made an error of law. As the issue of the bank statements and the available finances are central to the appeal I set aside the determination and redecide it.
7. Mr Tufan noted that the application indicated that the Appellant had the necessary £1600 required by the Immigration Rules but there were no copy bank statements on the file and the refusal refers to the Appellant having only £ 299. That is the sterling equivalent of the lowest balance during the relevant period shown in the Appellant's father's bank statement. That document is in the Home Office file and seemingly therefore was the only evidence of finance taken into account by the Secretary of State.
8. I have copy statements from the Appellant's account with Lloyds Bank which cover the period in question and which have been authenticated by the bank. Those statements indicate that they were issued before the Appellant submitted his application (13th August 2012). They show that the Appellant, for the period in question had a balance far in excess of the required £1,600.
9. It would appear that for whatever reason those did not reach the decision maker. However I take into account the Secretary of State's Evidential Flexibility Policy.

10. The Evidential Flexibility Policy is referred to in the case of Rodriquez (flexibility policy) [2013] UKUT 00042 (IAC). The letter of 19th May 2011 from Jeremy Oppenheim setting out the Evidential Flexibility Policy states:-

"While we are confident PBS is accessible and understandable, we also recognise there will always be the potential for human error. UK Border Agency caseowners employ a measure of flexibility when considering PBS applications. For example, caseowners operate a system which allows them to contact applicants to request further documentation or clarification where appropriate. In addition a validation stage is being trialled whereby applicants are contacted where mandatory evidence is missing and given the opportunity to provide it before the application is rejected. These policies aim to provide excellent customer service and reduce the number of applications falling for rejection."

11. The PBS Process Instruction entitled "Evidential Flexibility" published on 17th June 2011 sets out in the introduction two significant changes to the original Evidential Flexibility instruction. Firstly the time given to applicants to produce additional evidence has been increased from 3 working days to 7 working days and secondly, there is now no limit on the amount of information that can be requested from the applicant. However, requests for information should not be speculative and there must be sufficient reason to believe any evidence requested exists.
12. There is also a "Note" printed in bold to the effect that although deadlines are given to customers to respond to requests for further information, if additional information is received within UKBA (not necessarily by the relevant caseowner) prior to the case being dispatched this must be taken into account by the caseworker. This applies even if a refusal decision has been completed but the case has not been dispatched on CID.
13. The procedure to be followed by caseowners is then detailed. If there is missing evidence or evidence that is not in an acceptable format the caseowner must ask himself whether the application falls for refusal even if the missing information were provided. If it does not then the caseowner must establish that the evidence exists or that there is sufficient reason to believe that the information exists. If it does then the caseowner must request it from the applicant.
14. It is clear that the evidence existed at the time in the form of the Appellant's bank statements and it is also clear that the caseowner did not write to the Appellant requesting it. Had she done so the Appellant could have forwarded it. In failing to request the information the caseowner did not follow the Policy as required and thus the decision is unlawful.
15. I therefore allow the appeal to the extent that it is remitted to the Secretary of State to make a lawful decision in accordance with the Immigration Rules and the Evidential Flexibility Policy. The original bank statements are now on the Home Office file.
16. The decision of the First-tier Tribunal containing an error of law, I set it aside and in remaking the appeal allow it to the extent referred to above. I would add that my

decision is in no way a criticism of the First-tier Tribunal. The documents were confusing and the Appellant could have resolved matters far sooner had he elected and paid for an oral hearing.

Signed

Date 30th September 2013

Upper Tribunal Judge Martin