



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/19006/2014
IA/19007/2014

THE IMMIGRATION ACTS

Heard at Centre City Tower, Birmingham
On 19th November 2015

Decision & Reasons Promulgated
On 8th December 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

JOSEPH OGUWGUWA DIBIE (FIRST APPELLANT)
OLUBUNMI HANNAH AKINTOYE (SECOND APPELLANT)
(ANONYMITY ORDER NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr N Ahmed of Counsel instructed by Mayfair Solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellants appeal against a decision of Judge S J Pacey of the First-tier Tribunal (the FtT) promulgated on 14th November 2014.

2. The Appellants are Nigerian citizens born 12th December 1978 and 12th January 1986 respectively. On 15th March 2014 the first Appellant applied for leave to remain in the UK as a Tier 4 Student, and the second Appellant applied as his dependant.
3. The applications were refused on 7th April 2014. The first Appellant's application was refused with reference to paragraph 245ZX(d) which requires that he be awarded a minimum of 10 points with reference to Appendix C of the Immigration Rules. In giving reasons for refusal the Respondent contended that the first Appellant needed to show that he had funds of £1,600 for a consecutive 28 day period. The first Appellant had submitted a Santander bank statement showing a closing balance on 17th March 2014, but the Respondent stated that funds could not be taken into account after the application date of 15th March 2014. The Respondent's case was that the Appellant needed to show evidence of funds for 28 days from 16th February 2014 to 15th March 2014, but on 16th February 2014 the bank statement showed a balance of only £760.50. Therefore the first Appellant had not demonstrated that he had held the required level of funds for 28 consecutive days.
4. The second Appellant's application was refused with reference to paragraph 319C(b) because the first Appellant's application had been refused.
5. The Appellants appealed to the FtT requesting an oral hearing which was scheduled to take place on 30th October 2014. However on 29th October 2014 the Appellants' solicitors faxed the Tribunal to indicate that the Appellants no longer required an oral hearing and would not be attending, and written submissions dated 9th September 2014 were lodged with the Tribunal.
6. The FtT considered those written submissions, together with submissions made on behalf of the Respondent and found that the first Appellant had not demonstrated that he held the required funds of £1,600 for a 28 day period from 16th February 2014 to 15th March 2014. He was therefore not entitled to be awarded 10 points for maintenance pursuant to paragraph 245ZX(d) and his appeal was dismissed under the Immigration Rules. Because the first Appellant's appeal was dismissed under the rules, so was the second Appellant's appeal.
7. The FtT considered Article 8 of the 1950 European Convention on Human Rights and concluded that there would be no breach of Article 8 if the Appellants were removed from the UK, and therefore the appeals were dismissed on human rights grounds.
8. The Appellants applied for permission to appeal to the Upper Tribunal, relying upon three grounds which may be summarised as follows.
9. Firstly it was contended that the FtT had erred in concluding that the first Appellant had not supplied evidence showing that he held the necessary funds for a 28 period. It was contended that there was no provision to prohibit a bank statement being dated after the date of application.
10. Secondly it was contended that the FtT erred in failing to take into account the bank statement on the basis that the application was a points-based application, and

section 85A(4A) of the Nationality, Immigration and Asylum Act 2002 allowed the Tribunal to consider evidence adduced by an Appellant only if it was submitted in support of and at the time of making the relevant application. It was contended that this did not apply because in this case in addition to the decision to refuse to vary leave to remain, there was a decision to remove the Appellants, and the prohibition on considering evidence not submitted with the application therefore did not apply.

11. Thirdly it was contended that the FtT had erred in considering Article 8 by relying upon Gulshan [2013] UKUT 00640 (IAC) and Nagre [2013] EWHC 720.
12. Permission to appeal was refused by Judge Kamara of the FtT who found that the grounds amounted to no more than a disagreement with the findings of the FtT, and the FtT had made findings properly open to it on the evidence and the decision disclosed no arguable error of law.
13. The Appellants submitted a renewed application for permission to appeal which was considered by Deputy Upper Tribunal Judge Norton-Taylor who considered grounds 2 and 3 to be unarguable and refused permission to appeal.
14. In relation to the first ground permission to appeal was granted on the basis that the bank statement dated 17th March 2015, although postdating the making of the application, was before the Respondent at the time that the application was decided. It was therefore arguable that the bank statement should have been considered by the FtT, and if that statement had been considered, it arguably could have satisfied the maintenance requirement under Appendix C.
15. Following the grant of permission the Respondent lodged a response dated 14th May 2015 pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 submitting that the FtT had not erred, and that paragraph 1A(a) of Appendix C specifies that an applicant must have the funds specified in the relevant part of Appendix C at the date of the application.
16. The Tribunal issued directions making provision for there to be a hearing before the Upper Tribunal to decide whether the FtT decision contained an error of law such that it should be set aside.

The Upper Tribunal Hearing

17. Mr Ahmed relied upon the Ground of Appeal upon which permission had been granted, and indicated that he had no further oral submissions to make on that issue.
18. Mr Ahmed then proceeded to make further submissions, explaining that he had just had a conference with the first Appellant, who had told him that the deposit of funds into the Santander account was in fact made over a weekend, but that the deposit did not show until 17th February 2014 which was a Monday. It therefore appeared, if this was correct, that the funds in excess of £1,600 had been in the bank account prior to 17th February 2014. Mr Ahmed pointed out that this information had not been before the FtT, and then submitted to the Tribunal and Mr Mills, the Supreme Court

decision Mandalia [2015] UKSC 59 and indicated that there was also a fairness issue to be considered.

19. There had been no skeleton argument submitted raising these issues, and therefore both the Tribunal and Mr Mills were taken by surprise. I enquired of Mr Ahmed whether he was seeking permission to amend the Grounds of Appeal and he indicated that he was. Mr Ahmed pointed out that the Secretary of State had never contacted the Appellant to point out that he had only held the necessary funds for 27 days, and the FtT had not considered evidential flexibility and fairness.
20. Mr Mills objected to the application to amend the grounds, which was made verbally and not in writing. Mr Mills contended that permission had been granted for the Upper Tribunal to consider one ground, and that was the only ground which should be considered.
21. I refused Mr Ahmed's application to raise new issues at the hearing. I could see no merit in the point made by the first Appellant to Mr Ahmed that he had submitted funds into his Santander account over a weekend but they had not been credited until Monday 17th February 2014. It was not a point that had been made to the Secretary of State when the application for leave to remain was made. It was not a point that was made in the written submissions to the FtT. There had been no application for permission to appeal on this ground either to the FtT or the Upper Tribunal. No skeleton argument had been submitted.
22. Even if the funds had been submitted over a weekend, it would not have assisted the first Appellant, as it was accepted that he had made his application on 15th March 2014, and he would have still needed to show that he had £1,600 in his account for 28 days which would include 16th February.
23. With reference to fairness and evidential flexibility, these again were not issues that were raised either in the application to the Secretary of State, or before the FtT. There was no application for permission to appeal on these issues, made either to the FtT or the Upper Tribunal. I did not see merit in the point, and noted that in Mandalia, the Supreme Court were dealing with an application made prior to the introduction of paragraph 245AA of the Immigration Rules, and it was not suggested in this case, that a document in a sequence was missing.
24. For the above reasons, I refused the application to amend the Grounds of Appeal so that the above issues could be considered.
25. I then heard submissions from Mr Mills in relation to the one ground upon which permission had been granted. Mr Mills submitted that the judge granting permission to appeal had misunderstood the provisions contained within Appendix C. The FtT had dismissed the first Appellant's appeal because he had not proved that he held the required funds for 28 days prior to the date of application. The bank statement dated 17th March 2015 did not assist the Appellant, as the date of the bank statement postdated the application, and what was relevant was that the Appellant had not proved that he had available £1,600 at the date of application, and had done so for 28

consecutive days. It was for this reason that the FtT had dismissed the appeal, and the decision of the FtT disclosed no error of law.

26. At the conclusion of submissions I reserved my decision.

My Findings and Conclusions

27. I find the FtT did not materially err in law for the following reasons.

28. It is common ground between the parties that the application for leave to remain was made on 15th March 2014, and that the first Appellant needed to show that he had funds of £1,600.

29. I set out below paragraph 1A(a) and (c) of Appendix C;

1A In all cases where an applicant is required to obtain points under Appendix C, the applicant must meet the requirements listed below:

- (a) The applicant must have the funds specified in the relevant part of Appendix C at the date of the application;
- (c) if the applicant is applying as a Tier 4 Migrant the applicant must have had the funds referred to in (a) above for a consecutive 28 day period of time.

30. The first Appellant needed to show that he had £1,600 available at 15th March which was the date of application, and that those funds had been available for 28 consecutive days, from 16th February 2014 to 15th March 2014.

31. The first Appellant's Santander account shows that on 10th February 2014 he had funds of £760.50. The next entry is dated 17th February 2014 and shows a deposit of £1,000 giving a total of £1,760.50.

32. The FtT was therefore correct to find in paragraph 8 of the decision that the 28 day period ran from 16th February 2014 to 15th March 2014, and the necessary level of funds (a minimum of £1,600) was not shown in the bank account until 17th February 2014. Therefore the first Appellant had not satisfied the requirements of the Immigration Rules and could not rely upon holding funds for a consecutive 28 day period which ended on a date after he had submitted his application.

33. The FtT committed no error of law in dismissing the Appellants' appeals under the Immigration Rules.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision. The appeals are dismissed.

Anonymity

No order for anonymity was made by the First-tier Tribunal. There has been no request for anonymity and the Upper Tribunal makes no anonymity order.

Signed

Date

25th November 2015

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The appeals are dismissed. There are no fee awards.

Signed

Date

25th November 2015

Deputy Upper Tribunal Judge M A Hall