



In the Upper Tribunal (Immigration and Asylum Chamber)

R (on the application of Pavel Prodobreyev) v Secretary of State for the Home Department (On-line application: evidence) IJR [2015] UKUT 00699(IAC)

Field House
8 October 2015

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE DAWSON

Between

The Queen on the Application of
PAVEL PRODOBREYEV

Applicant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Mr E Nicholson, instructed by Zahra & Co Solicitors, appeared on behalf of the Applicant.

Mr Z Malik, instructed by the Government Legal Department appeared on behalf of the Respondent

Screenshots of typical applications should not be relied upon as evidence of the actual experience of an individual making an application.

JUDGMENT

1. This is an application for judicial review. Permission was granted by Judge Kebede. The decision under challenge was made on 27 March 2014. It was a decision to treat an application by the applicant for further leave to remain as invalid. The reason relied upon by the Secretary of State both in that decision and in these proceedings is that

the applicant was required to submit a Police Registration Certificate with his application, but had not done so.

2. The applicant is a national of Kazakhstan. He came to the United Kingdom on 9 October 2012 with entry clearance as a Tier 4 (General) Student valid until 14 February 2014. The present application was made on 5 March 2014, after the expiry of his leave but within the 28-day period referred to in paragraph 245ZX(1) of the Statement of Changes in Immigration Rules, HC 395 (as amended). His position is, and always has been, that there was no requirement to submit a Police Registration Certificate with, or as part of, that application. He recognises that he is required to register with the police. His witness statements indicate that he has done so, but has lost the Certificate and so is unable to produce it.
3. The applicant's application was made on-line. The on-line application process enables an application form to be tailored to the nature of the application being made and the needs of the person making it. Thus, responses to certain questions will lead to the posing of further relevant questions; but matters which are shown to be irrelevant to the present application by the responses already given are not the subject of further questions.
4. The applicant's application could not be finalised on-line, but was a hybrid, of the "print and send" type. That is to say, the end of the on-line part of the process was the completion of the application form, with all relevant questions answered, and the form itself tailored to the applicant's own application. He was then required to print it off and send it to the respondent, accompanied by the appropriate fee and any required documents. The documents required to be sent with the form are listed at the end of the form itself: that is one of the consequences of the tailoring of the form to the applicant's individual responses.
5. Paragraph 34A(vi)(a) of the Immigration Rules, however, may impose a greater duty on applicants. It requires that the application

"...be accompanied by the photographs and documents specified as mandatory in the application form *and/or related guidance notes*"
6. The final words, which we have emphasised, are the subject of special reliance by the Secretary of State on the facts of the present case. Mr Malik on behalf of the Secretary of State submits that it is clear that the applicant may be required to submit a document that is not mentioned in the application form but is required by the "related guidance notes".
7. At the hearing of this application we had considerable difficulty in determining precisely what it was that the applicant had encountered at each point in the on-line part of his application. The Secretary of State produced screenshots apparently establishing that, at the appropriate point in the process, the applicant was informed that a Police Registration Certificate is required. It was accepted that the screenshots we saw were not screenshots of the applicant's application, but, on instructions, Mr Malik indicated that they were typical, and therefore to

be taken as the same as the applicant would have encountered. We were not persuaded; and a post-hearing note from Mr Malik, to which Mr Nicholson on behalf of the applicant has replied, shows that we were right to be sceptical. It appears that screenshots of typical applications should not be relied upon as evidence of the actual experience of an individual making an application.

8. Investigation by the Secretary of State has now established that the architecture of the software is such that the applicant's answers to the questions posed would not have led to any indication that a Police Registration Certificate was required, either by notice in the on-line process itself or by listing that document in the application form when it was printed. We are grateful to Mr Malik and those instructing him for undertaking that investigation. It concludes against the Secretary of State the question whether the Police Registration Certificate was specified as mandatory in the application form. It was not.
9. The question then is whether the Certificate was specified as mandatory in any "related guidance notes". Here again the Secretary of State's investigations are helpful. At the end of the application form as printed, there is a heading "Documents you must provide", and under that heading is the list to which we have already referred. At the end of the list are the following words:

"You may also need to provide additional documents depending on your circumstances"

And in the box below that are two web links. One of them applies only to entry clearance applications and is not relevant to this case. The other takes the reader to the version in force of "Tier 4 of the Points Based System - Policy Guidance". That guidance does indicate the need to register with the police, but it does not at any point specify the Police Registration Certificate as a mandatory accompaniment to an application for leave to remain.

10. The only document which does appear to specify the Certificate as mandatory is the guidance issued by the Secretary of State for her decision makers. It is called "Guidance - Specified Application Forms and Procedures". That includes, at page 8 in the version put before us, the following words:

"The applicant must:
Submit any supporting documents specified "mandatory".... The mandatory documents are:
...
Police Registration Certification (if applicable)".

11. The guidance goes on to say that "if any of the above requirements are not met, you must reject the application as invalid". Bearing in mind the facts as so far revealed, the Secretary of State is now compelled to rely upon that provision as being the "related guidance" which required the applicant to submit a police registration certificate.

12. We have the very greatest difficulty with that. First, as Mr Nicholson points out, it would only be by a contorted process, including in particular ignoring the guidance to which an applicant was referred, that he could light on this guidance, to which he was not referred. Secondly, any applicant who did find this guidance would immediately realise that it was not intended for applicants but for the Secretary of State's decision makers. Thirdly, this document itself summarises the rules, including the reference to "related guidance notes"; it gives no hint that the document itself is to be regarded as the related guidance notes and it is difficult to see how, if it is itself the "related guidance notes" it should refer to some other document under the same head. It seems to us that it is not right to describe this guidance as "related guidance" at all. For the purposes of paragraph 34A(vi)(a) of the Immigration Rules, the guidance can only properly be regarded as "related" to the application process if it is guidance for applicants. The guidance upon which the Secretary of State relies is not guidance in relation to the application process: it is guidance in relation to the decision process and in relation to the acts of individuals who are not themselves applicants.
13. Even if we were wrong about that, it seems to us that the guidance does not require the submission of a Police Registration Certificate in the applicant's case in any event. The requirement for the Certificate is qualified by the words "(if applicable)". We do not see any good reason for interpreting those words as meaning "if the applicant is required to have a police registration certificate". On the contrary, given that some applicants are apparently required to submit such a certificate, whilst others are not, the reference must be to those who are required in or by the application process to submit a Certificate.
14. It follows that the present applicant was not required to submit a Police Registration Certificate: that is a document that was not specified as mandatory in the application form or in any related guidance. The application for judicial review is granted and the decision under challenge will be quashed.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 19 November 2015