



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/05466/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 1 November 2013

Determination Promulgated  
On 4 November 2013  
.....

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

MR UKTADHIR AHMED CHOUDHURY

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr M. Bhuiyan  
For the Respondent: Mr. J Parkinson, HOPO

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Bangladesh, born on 21 August 1986. He has been granted permission to appeal the determination of First-tier Tribunal Judge Oliver allowing his appeal against the respondent's decision dated 6 February 2013 to refuse

to grant him leave to remain as a Tier 4 student to the limited extent that he is granted 60 days in order to amend his application. The respondent's decision was that the bank documents on which the appellant relied to show that he met the maintenance requirements were from the Bangladesh Commerce Bank Ltd, which was not on the acceptable list of financial institutions.

2. The appellant's application which led to the respondent's decision was made on 18 October 2012.
3. The judge recorded at paragraph 4 of the determination that the list of financial institutions from Bangladesh from which the UKBA would accept financial statements to support visa application made under the points based system was issued on 2 October 2012 and withdrawn on or before 16 October 2012. It was not reinstated until December 2012. The Bangladesh Commerce Bank Ltd was not then listed in table 12 to appendix P of the rules. At the date of the application the relevant was not listed; by the date of decision it was.
4. The judge went on to say that had the application been determined by the respondent promptly his application would have succeeded. It was only because of delay by the respondent that at the date of decision, he did not satisfy the changed requirements. Instead of offering him the chance to rectify what had now become a deficiency in satisfying the maintenance requirement, the respondent chose to make the decision well over 3 months after the application. The judge said that the question which arises is that raised in **Thakur (PBS Decision – common law fairness) Bangladesh [2011] UKUT 00151** of basic common law fairness. The judge said that the point has been considered in subsequent cases which were not particularly helpful in deciding this case.
5. The judge found that it was the respondent's action in reinstating the negative list which caused the application to fall foul of the new rules and it is because this was not drawn to the attention of the appellant, even though the reinstatement was envisaged in the notice by which the negative list was withdrawn, that he held that the appellant should have been given a chance to cure the defect that had arisen in his application. The judge noted that in a notice issued by the British High Commission in Dhaka on 18 November 2012 it was stated that "the UKBA" intends to make changes to the immigration rules that will bring the lists into effect for all PBS visa *applications submitted from 13 December 2012.*" The appellant may have realised that the list was to be reinstated but now when that would be or what the consequences of that reinstatement would have been. The 60 day extension allowed in sponsor revocation cases would appear to be appropriate in these circumstances also.
6. The judge allowed the appellant's appeal to the extent that he is granted 60 days in order to amend his application.

7. The appellant was granted permission to appeal on the basis that it is arguable that the judge erred in qualifying the extent to which the appeal was allowed.
8. It was not disputed by the parties that the Statement of Changes in Immigration Rules HC760 announced in November 2012 clearly confirmed that the list of acceptable financial institutions in Bangladesh would be effective for all PBS visa applications from 13 December 2012. The question posed by Mr. Parkinson was - did the Secretary of State have in place transitional provisions for applications to be considered under whatever rules applied at the time the application was made until HC760 came into force? The answer was "no" because we could not find any such transitional provisions.
9. Accordingly, I find that the Secretary of State was wrong to apply Immigration Rules HC760 to the appellant's application as it was not in force when the appellant made his application in October 2012.
10. Accordingly, I find that the judge was wrong to qualify the extent to which he allowed the appellant's appeal. I set aside the judge's decision.
11. I remake the decision and allow the appellant's appeal.

Signed  
Upper Tribunal Judge Eshun

Date