

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/07392/2013

THE IMMIGRATION ACTS

Heard at UT (IAC) FIELD HOUSE
On 17.7.2013

Determination Promulgated
On 26.07.2013

Before

UPPER TRIBUNAL JUDGE D E TAYLOR
DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT Appellant
and

MR LACHLAN ANDREW RAMSAY EVANS Respondent

Representation:

For the Appellant: MR S WALKER (HOME OFFICE PRESENTING OFFICER)
For the Respondent: MR EVANS - IN PERSON

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against a determination on the papers by First Tier Tribunal Judge Britton (FTJ) promulgated on 3.6.2013. The FTJ allowed the appeal to vary leave to remain to Mr Evans under the Tier 1 (General) points based scheme. The matter comes before us to consider if there was an error of law in the determination.

Background

2. The appellant refused Mr Evans 'application on the grounds of his failure to show previous earnings (Appendix B) and maintenance (Appendix C). Mr Evans submitted details of his earnings including dividend vouchers in the sums of £10,000 and £9,000. He produced evidence of the dividend income in bank

statements. The respondent was not satisfied that the amounts shown accurately reflected the stated income and consequently awarded only 15 points.

3. The appellant then considered maintenance in respect of which the respondent had provided copies of his internet bank statements. The appellant awarded 0 points for the failure to produce original documentary evidence. The refusal letter dated 19.2.2013 stated **“As the application falls for refusal on other grounds your original bank statements were not requested”**.

First Tier determination

4. The Judge considered the appeal on the papers and took into account evidence of letters dated 1st and 5th March 2013 from Mr Evans and certified bank statements produced by him under a cover letter dated 15th May 2013 sent to the Secretary of State. The Judge found that the appellant failed to properly examine the bank statements and as a result miscalculated the dividend income by failing to take into account an overpayment of £1500 shown in the statements. The Judge concluded that the appellant was in a position to meet the requirements of the immigration rules as the evidence showed that the dividend income was corroborated in the statements. He relied on the original bank statements sent post decision as evidence meeting the maintenance requirements and allowed the appeal.

Grounds of appeal

5. The Secretary of State submitted that the FTJ erred by relying on post decision evidence as to maintenance. He took into account at the date of the hearing documentary evidence of certified bank statements which had not been submitted with the application, contrary to section 85A(3) Nationality, Immigration and Asylum Act 2002. Permission was granted by First Tier Tribunal Judge Fisher on 18.6.2013.

Initial hearing before us

6. Mr Walker did not pursue the grounds of appeal. He accepted that had the Secretary of State not miscalculated the dividend income as shown in bank statements, Mr Evans would have achieved the relevant number of points for his previous earnings. As the maintenance issue was secondary to the refusal, the Secretary of State had not asked for the originals or given any opportunity to Mr Evans to produce the original bank statements, in accordance with the UKBA policy guidance. Mr Evans subsequently produced the certified bank statements which were before the FTJ.
7. We conclude that the Judge should have allowed the appeal as not being in accordance with the law, since the Secretary of State did not apply her own policy of contacting the appellant to request original documents. However, as the Secretary of State has accepted that the appeal will be allowed, there can only be one outcome. Accordingly the original decision should stand.

8. Decision

There is no material error of law in the determination.
The decision of the First Tier Tribunal shall stand.

Signed

Date 25.7.2013

GA Black
Deputy Judge of the Upper Tribunal

No order for anonymity made.

To the respondent - fee award

We make an order for repayment of the fee of £80.00 as the respondent was in a position to have been able to make the decision on the information at the time of the application.

Signed

Date 25.7.2013

GA Black
Deputy Judge of the Upper Tribunal