



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/23448/2012

THE IMMIGRATION ACTS

Heard at Bradford

On 2 April 2013

Determination

Promulgated

On 27 June 2013

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

UMAIR ALI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Khan

For the Respondent: Ms J Donnelly, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Umair Ali, was born on 8 September 1987 and is a male citizen of Pakistan. The appellant had appealed against a decision of the Secretary of State dated 12 October 2012 to refuse his application for

further leave to remain in the United Kingdom as a Tier 4 (General) Student. First-tier Tribunal (Judge Pirotta) in a determination promulgated on 4 January 2013, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are two grounds of appeal. The first asserts that the judge's findings and reasons were "conflicting and confusing" which rendered the determination unsustainable. The grounds note that at [18] when discussing the maintenance requirements of the Rules, the judge had found that there was "no evidence of liquid assets held by both [the appellant and his sponsor] between 19.08.2012 and 14.08.2012". Earlier, at [16] the judge had written, "...there was no evidence of his assets between 19.08.2012 and 24.08.2012." The grounds asserted there was further difficulty at [14] where the judge appeared to indicate that a balance which had been held in a bank account from 27.08.2012 to 19.08.2012 (the latter date being earlier than the former).
3. These concerns were addressed to some extent by Judge Lewis on the grant of permission at [2], he wrote, "ground 1 may be no more than a typing mistake in paragraph 18 of the determination so that if 14.8.2012 becomes 24.8.2012 there is no discrepancy, together with a reverse chronology in paragraph 14". I have to say I agree with that analysis. The meaning of both passages quoted in the grounds is apparent upon a reading of the entire determination and of the evidence adduced by the appellant. The skeleton argument, submitted at the Upper Tribunal initial hearing, seeks to enlarge upon the point by referring to other errors in the dates contained in the determination. I agree that the errors are confusing and should have been picked up by the judge by way of proof-reading. However, the thrust of the judge's finding is unequivocal, namely that the appellant did not have the required sum of funds in his possession for the 28 day period required prior to the submission of his application for further leave to remain. That fact appears now to be acknowledged by the appellant for the second part of the skeleton argument submitted to the Upper Tribunal begins with the words, "even if there was a shortfall for a few days, the respondent should have followed her Flexibility Policy." The skeleton argument goes on to say that,

"Judge Pirotta had seen the sponsor's brother's bank account which was dated 19 August 2012 and started on 19 February 2012 and ended on 19 August 2012. ...The appellant should have been given an opportunity to submit a further statement to address the shortfall. There was sufficient balance in the brother's account to address the shortfall. A copy of the bank statement from 19 August 2012 to 31 December 2012 is attached at page 4."

The skeleton argument quotes the case of **Rodrigues (Flexibility Policy) [2013] UKUT 00042**. It was asserted that "the respondent erred in law when she did not apply the flexibility policy."

4. I find that submission to be ill-founded. The Tribunal in **Rodrigues** discussed and distinguished the Court of Appeal decision in **Alam & Others [2012] EWCA Civ 960**. **Alam** concerned the failure of the appellants to comply with one of the requirements to provide specified documentary evidence. As the Tribunal in **Rodrigues** noted at [21] “in each case the missing documentation was available at the state of the First-tier Tribunal hearing.” The Tribunal noted that the Court of Appeal were concerned with the fairness of the points-based scheme as whole and the application of any flexibility policy by the respondent. And it is hardly surprising giving that the missing documentation in **Alam** appears only to have become available to the judge at the First-tier Tribunal hearing; it had not been submitted nor its existence adumbrated to the Secretary of State either at the time of the application for further leave or at any time between the refusal and the date of the First-tier Tribunal hearing. The facts in the present appeal resemble those of **Alam** rather than **Rodrigues** which concerns a failure or refusal of the Secretary of State to apply a flexibility policy which covered the application before it. In other words, in the present appeal the Secretary of State can hardly be criticised for failing to apply a policy of flexibility when, on the face of the appellant’s application, there was no reason to suppose that he was in possession of the required funds for the relevant period. As Ms Donnelly, for the respondent, submitted the decision by Judge Pirota to dismiss the appeal was the only decision available given that he had to exclude, by virtue of Section 85A of the Nationality, Immigration and Asylum Act 2002, evidence (in this case evidence of the funds held by the sponsor) in his consideration of the appeal.
5. The second ground of appeal suggested that the judge had failed to understand the financial evidence. However, it was clear from Mr Khan’s submissions at the initial hearing together with the contents of the skeleton argument to which I have referred above the appellant accepts that, at the time of the application to the Secretary of State, the appellant did not have evidence of the necessary funds.

DECISION

6. This appeal is dismissed.

Signed

Date

Upper Tribunal Judge Clive Lane