Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/27487/2012

THE IMMIGRATION ACTS

Heard at Field House
On 29 July 2013

Determination Promulgated
On 13 August 2013
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Before

UPPER TRIBUNAL JUDGE CRAIG

Between

SOHRAB NAZEER

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Kirk, Counsel, instructed by Abbott Solicitors
For the Respondent: Miss H Horsley, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, who was born on 9 June 1988, is a citizen of Pakistan. He entered this country on 25 January 2010 with entry clearance as a student, which expired on 29 February 2012. The day before this visa expired, on 28 February 2012, he applied for

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further leave to remain as a Tier 4 (General) Student Migrant pursuant to paragraph 245ZX of the Immigration Rules.

2. In support of this application the appellant submitted a Confirmation of Acceptance for Studies (CAS) for a professional higher diploma in tourism and hospitality at Lincoln's College London, but this college's licence was revoked by the respondent on 23 May 2012.

3. Following this revocation, on 22 June 2012, the respondent wrote to the appellant telling him that the licence of Lincoln's College had been revoked, but that before a final decision was made, in light of the respondent's rules and guidance, the respondent would suspend consideration of his application for a period of sixty calendar days. The appellant was told that within this time, if he obtained a new CAS for a course of study at a fully licensed Tier 4 education sponsor, the respondent would then consider an application by him to vary the grounds of his original application.

4. Thereafter, the appellant secured a place at another college (London School of Technology, Middlesex) and on 24 August 2012 his solicitors wrote to the respondent enclosing some of the documentation which had been submitted with the original application and re-applied for "extension/switching his Tier 4 (General) Student visa with the new sponsor".

5. This application was then considered by the respondent, but on 16 November 2012, the respondent refused the application on the basis that the appellant had failed to meet the maintenance requirements under the Immigration Rules.

6. At the same time as making her decision refusing the appellant's application, the respondent also made a decision to remove the appellant by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. Both these decisions were communicated to the appellant in the refusal letter of 16 November 2012. The appellant appealed against these decisions and his appeal was heard before First-tier Tribunal Judge Oxlade, sitting at Hatton Cross on 29 April 2013.

7. In a determination prepared on 22 May 2013, and promulgated the following day, Judge Oxlade dismissed the appellant's appeal, both under the Immigration Rules and under Article 8. Although it was submitted on behalf of the appellant that whatever the decision might be on the substantive appeal, the removal decision under Section 47, made simultaneously, was not in accordance with the law, this submission was not dealt with in Judge Oxlade's determination. However, in light of the decision which I make below, it is not necessary for me to deal with this aspect of the appeal separately. Hereafter, references to "the appeal" are references to the appellant's appeal against both the substantive decision and the removal decision.

8. The appellant has appealed against this decision and was granted permission to appeal by Upper Tribunal Judge Renton (sitting as a Judge of the First-tier Tribunal) on 25 June 2013. Although the appellant has appealed under Article 8 as well as

under the Rules, in light of my decision below, I do not need to consider this aspect of the appeal.

The Hearing

9. It is common ground that with regard to the appeal under the Rules, the only issue between the parties was as to whether or not the maintenance requirements were satisfied. The respondent did not and does not seek to suggest that any of the other requirements under the Rules have not been satisfied. The appellant was awarded the 30 points necessary under "Attributes – Confirmation of Acceptance for Studies", but was awarded no points under "Maintenance (Funds)", because the respondent considered that a letter from United Bank confirming that his mother had been issued with a loan was not acceptable as evidence of funds available to him because the letter was not in his name.

10. In the course of her determination, Judge Oxlade found, at paragraph 20, that "by Appendix 1B(c)" (which was presumably meant to be a reference to Appendix C1B(c)) the funds held in overseas accounts had to be held in the appellant's name. Because the funds were not, she considered that the funds held in the appellant's mother's account could not be relied upon.

11. In the course of his clear and cogent submissions, Mr Kirk submitted that under Appendix C1B(a)(iii) an appellant was specifically allowed to rely on a bank statement in a parent's name, and that the judge had accordingly been wrong to interpret Appendix C1B(c) (which in any event was not the paragraph relied upon) as requiring that funds be held in the appellant's name. Accordingly, the judge had plainly erred in law.

12. On behalf of the respondent, Ms Horsley accepted that there had been an error of law in the determination. First, Judge Oxlade had been wrong as regards her findings under Appendix C1B(d) (although in the context of the appellant's case this aspect of the submissions does not need to be developed). Ms Horsley also accepted that Mr Kirk was right to say that the appellant could rely on a bank statement from a parent, although it was the respondent's case originally that these bank statements had been properly excluded from consideration because they had not been submitted with the application to the respondent. So, although the appellant was right on the legal point, if they had not been submitted with the original application, then they still could not be relied upon.

13. In reply, Mr Kirk submitted that it was the appellant's case that whether or not these documents had been resubmitted with a later application in August, as a matter of fact they had been submitted on 28 February 2012, as referred to at paragraph 4 of the appellant's witness statement which was in the bundle before Judge Oxlade. Further, there had been no dispute before Judge Oxlade that these statements had in fact been submitted.

Error of Law

14. It is clear that it was the appellant's case that his mother's bank statements had been submitted with the original application (this is referred to at paragraph 4 of his witness statement which had been before the judge). As this bank account had the equivalent of about £13,000 in it throughout the relevant period, which was considerably more than the £1,600 necessary to satisfy the maintenance requirement, if Judge Oxlade was to reject the application on the basis that the maintenance requirement had not been met, she needed to make a finding that the statement had not in fact been submitted, which she did not make. Accordingly, I found that the determination had contained a material error of law in the following terms:

> "It has been accepted on behalf of the respondent that if the appellant had submitted bank statements of his mother, as he had claimed in his witness statement, at paragraph 4, this would have been relevant to the issue of whether he had sufficient funds available and the judge erred by finding that he did not. Accordingly, the judge's failure to make any finding as to whether or not these statements had been submitted with the original application, which was material to the decision, was a material error of law."

15. Accordingly, I found that Judge Oxlade's decision had to be remade by the Upper Tribunal, and I proceeded to hear evidence for this purpose.

16. Before hearing evidence, Ms Horsley accepted on behalf of the respondent that if on the evidence it was established that the appellant's mother's bank statements had been submitted with the original application, then the maintenance requirement under the Rules would have been met.

17. I then heard evidence from the appellant, who was cross examined. He stated that he had submitted the application for further leave to remain on 28 February 2012, and that he had submitted the documents relating to his mother's bank account with that application. He confirmed this in cross-examination, and Ms Horsley subsequently stated on behalf of the respondent that she made no challenge to the appellant's assertion that he did send in his mother's bank statement, together with the original application.

18. On behalf of the respondent, in the course of her submissions, Ms Horsley accepted that the August application had not been treated as a new application, and that the relevant date for the purposes of this appeal was February 2012. The consideration of that application had effectively been suspended pending receipt of further information regarding an alternative college. So if the Tribunal accepted that the appellant's mother's bank statements had been submitted with the application in February, it would seem the maintenance requirements under the Rules had been satisfied.

19. Ms Horsley stated, correctly, that it was very likely that the refusal of the application was not the fault of whoever had dealt with the application in August, because it would appear that there had not been a reference back to the documents which had

been submitted originally, but she accepted that as she could not challenge that the relevant bank statements had been submitted in February, the Tribunal's task was not very difficult.

20. On behalf of the appellant, Mr Kirk submitted that as the evidence showed that the mother's bank statements, together with an affidavit from the appellant's mother confirming that these funds were available for the appellant had been submitted with the application, the maintenance requirements under the Rules had clearly been satisfied.

Discussion

21. In light of the evidence which I have heard, I am entirely satisfied on the balance of probabilities that the appellant did indeed submit the bank statements relating to his mother's bank account, together with an affidavit from his mother confirming that these funds were available for his use, at the time he submitted his application in February 2012.

22. It follows that the maintenance requirement under the Rules was satisfied. As it has been accepted that the other requirements under the Rules were satisfied, it follows that this appeal must be allowed, and I will so find.

Decision

I set aside the determination of First-tier Tribunal Judge Oxlade as containing a material error of law, and substitute the following decision:

The appellant's appeal is allowed, under the Immigration Rules.

Signed: Date: 31 July 2013

Upper Tribunal Judge Craig