



**(IMMIGRATION AND ASYLUM CHAMBER)
IA/03168/2014**

**UPPER TRIBUNAL
APPEAL NUMBER:**

THE IMMIGRATION ACTS

Heard at: Field House

**Determination
Promulgated**

On: 20 October 2014

On: 30 October 2014

Prepared: 28 October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

**MR ZEESHAN LATIF
NO ANONYMITY ORDER MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

**For the Appellant: Mr M Murphy, counsel (instructed by Farani Javid
Taylor Solicitors LLP)**

**For the Respondent: Ms L Kenny, Senior Home Office Presenting
Officer**

DETERMINATION AND REASONS

1. The appellant is a national of Pakistan, born on 12th July 1990. His appeal against the decision of the respondent refusing his application to remain as a Tier 4 (General) Student Migrant was dismissed by First-tier Tribunal Judge M A Khan in a determination promulgated on 11th July 2014.
2. The respondent had contended that the appellant did not meet the requirements of paragraph 245ZX(a) and paragraph 322(1A) of the Immigration Rules. The assertion was that the appellant had presented false documentation in support of his applications.

3. Both parties were represented at the hearing before the First-tier tribunal on the 3rd July 2014. On behalf of the respondent an attempt was made to rely on the refusal letter which contended that the bank statement submitted “had been proven to be false by the issuing authority.” However, it was accepted at the hearing that there was no further evidence from the respondent with regard to the allegations of deception [19].
4. On the evidence before him, the Judge found “on the higher standard of proof on the balance of probabilities” that the respondent had not established that the appellant had exercised deception in support of his application for leave to remain in the UK [23]. The appellant had provided a written statement in which he claimed that the bank statement he furnished was in fact genuine.
5. The Judge found that it was not enough for the respondent “to simply state the claimed evidence of forgery by way of a statement in the refusal, she has to provide evidence to corroborate the statement” [22]. This she had failed to do. Accordingly, there was no other evidence apart from a mere assertion of the deception in the refusal.
6. However, the Judge noted that the appellant did not give any oral evidence. His statement produced at the appeal hearing where he asserted that the bank statement furnished was genuine, was accordingly not able to be challenged by the respondent in cross-examination [24]. The appellant provided no further documentary evidence to show that he had funds for the consecutive 28 days. The Judge stated that although the respondent had not established deception “doubts as to the appellant's bank statement remain.” Accordingly he went on to find that the appellant had not established that he met the requirements of the rule with regard to maintenance.
7. On 5th September 2014, First-tier Tribunal Judge Chambers granted the appellant permission to appeal on the basis that it was arguable that adequate reasons for the Tribunal's decision had not been given: **MK (Duty to give reasons) Pakistan [2013] UKUT 00641 (IAC)**.
8. Mr Murphy who did not represent the appellant before the First-tier Tribunal, relied on the grounds of appeal in support of the application for permission.
9. He submitted that the sole reason relied on in the refusal decision dated 20th December 2013 was that the appellant failed to meet the requirements of paragraph 245ZX(a) because his application fell for refusal under paragraph 322(1A).

10. There were no other grounds of refusal. Once the Tribunal found that the respondent failed to discharge the burden resting on her relating to the alleged deception, "the appellant's application is complete as the statements which were incorrectly considered as fraudulent would now be considered."
11. Thus the sole basis for not awarding the ten points for maintenance no longer existed and he met the requirements for the grant of leave.
12. The contention by the Judge that there are "doubts over the bank statement" is not supported by any reasoning. Proper reasons were required for such a finding. No reasons had been given to doubt that the bank statement was genuine and accordingly the appellant was entitled to be awarded points for maintenance.
13. The bank statement for the relevant 28 day period had been produced before the First-tier Tribunal. It was also produced before the Upper Tribunal.
14. On behalf of the respondent, Ms Kenny sought to adduce evidence that had not been before the First-tier Tribunal, with regard to the impugned statement. She relied on the application submitted as part of the Rule 24 response, dated 15th September 2014. It is stated at paragraph 6 that the respondent would seek to rely on the document verification report and associated documentation at a re-hearing. She made no further submissions.
15. Ms Kenny referred to the accompanying letter, where the respondent sought to submit three pieces of evidence for consideration. That evidence consisted of the request for document verification by the Home Office (in respect of the impugned bank statement), the email correspondence between the FCO and the appellant's bank, and the document verification report provided to the Home Office.
16. It is asserted that the appellant's case was one of those chosen to be managed under the new electronic system of paperless file management. "Unfortunately, there were problems in ensuring that all relevant documents had been scanned to the Home Office database." Accordingly, the respondent's bundle did not contain all the relevant documents on which the respondent relies.
17. Mr Parkinson, who has made the application on behalf of the respondent, stated that he only became aware of the problem 'the day before'. (That would have been on or about the 14th September 2014). He then took immediate action to rectify the deficit.

18. The evidence produced was the overseas request form. The document to be verified, namely the bank statement, was identified.
19. It is stated that the bank letter and the statement were forwarded to the “concerned bank” for verification via email. The bank, via return email, confirmed that the documents submitted are “fake”.
20. In the email sent in reply, it is simply stated that the attached documents are found “fake”.
21. In the document verification report it is claimed that the document was false. However, the basis for that claim is not set out. In particular, there is no further detail or analysis or assessment by the verifying officer as to why it is said to be false.
22. Mr Murphy opposed the application to adduce this evidence. He submitted that the respondent had failed to meet the relevant requirements for its admissibility pursuant to paragraph 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008.
23. I refused the respondent's attempts to adduce this evidence. There has been no explanation as to why it was not submitted to the First-tier Tribunal. As indicated, the respondent was represented at the hearing. The evidence, such as it is, was available in December 2013.
24. At the hearing before the First-tier Tribunal, on 3rd July 2014, no attempt had been made by the respondent at that stage to adduce that evidence. Nor has any explanation been given as to why it could not have been submitted to the First-tier Tribunal timeously. There has accordingly been unreasonable delay in producing that evidence.
25. In any event, the basis upon which the document is said to be “false” or “fake” has not been given. There continues to be a mere assertion. Accordingly, even if admitted, the statement would not be treated as forged by a Tribunal as there was no clear evidence before it. A bare allegation of forgery, or an assertion by an entry clearance officer that he believed that the document was forged, could not carry weight: **RP (Proof of Forgery) Nigeria [2—6] UKAIT 00086**.

Assessment

26. I find that the First-tier Tribunal Judge failed to give any reasons for the doubts that he stated remained as to the appellant’s bank statement [24]. Proper reasons for that finding must be given. In this case no reasons at all were given to support that finding. The bank statement relied on was produced and it showed that the appellant had funds available for the necessary consecutive 28 days.

27. I accordingly find that there has been a material error of law and I set aside the decision and re-make it.
28. The only reason for refusing the appellant's application was that he failed to meet the requirements of paragraph 245ZX(a) as it had been refused under paragraph 322(1A), namely that the bank statement concerned had been forged.
29. The Judge's finding that the respondent had failed to discharge the burden of proof in that regard has not been the subject of any challenge.
30. There were no other grounds of refusal. The appellant had contended in his witness statement that the bank statement was genuine and authentic. That statement was produced and showed the necessary funds were available for the consecutive 28 days required.
31. I accordingly find that the appellant was entitled to be awarded points for maintenance under Appendix C.

Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. I re-make the decision and substitute for it the following decision:

The appeal of the appellant is allowed.

No anonymity order made

Signed

Date: 28/10/2014

C R Mailer
Deputy Upper Tribunal Judge