



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/09968/2014

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke-on-Trent
On 18th August 2014

Determination Promulgated
On 22nd August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE COATES

Between

DR EJIKE JULIUS NWEKE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Mahmood instructed by Dominion Solicitors
For the Respondent: Mrs K Heath, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a Nigerian national born on 26th January 1970. On 14th December 2013 he applied for indefinite leave to remain as a Tier 1 (General) Migrant. His application was refused by the Respondent on 6th February 2014 and directions were given for his removal under Section 47 of the Immigration, Asylum and Nationality

Act 2006. The Respondent's reasons for refusal are set out in a letter dated 6th February 2014.

2. The Appellant exercised his right of appeal and his appeal was heard at Stoke-on-Trent on 20th May 2014 by Judge of the First-tier Tribunal Frankish. The Appellant was not legally represented. The Respondent was represented by a Presenting Officer, Mrs V Boden.
3. Judge Frankish notes, at paragraph 5 of the determination, that contrary to directions, the Appellant filed no witness statement or documents. The First-tier Judge admitted further documents provided by the Appellant at the hearing which are referred to later in the determination. However, the judge correctly refers to the restriction imposed by Section 19 of the UK Borders Act 2009 as now incorporated into Section 85(4) of the 2002 Act.
4. The Respondent's reasons for refusal are summarised at paragraph 6 of the determination. The application was considered against paragraph 245CD of the Immigration Rules. The Appellant was required to gain 45 points for previous earnings under Appendix A. Since the Appellant's application was dated 14th December 2013 the fifteen month period from which he was entitled to demonstrate twelve months' earnings runs from 14th September 2012 to 14th December 2013. The Appellant sought to rely upon earnings from 18th September 2012 to 12th December 2013 but did not specify a twelve month period. He was therefore assessed on the past twelve months i.e. 24th December 2012 to 12th December 2013 which showed earnings of £32,639.59 gross, £29,562.59 net. However, only £3,008.43 of this could be corroborated from documents submitted. Therefore the Appellant was awarded nil points out of 45 for earnings and nil points out of 5 for UK experience since he had failed to demonstrate the requisite minimum of £16,000 income in the UK.
5. It is apparent from paragraph 7 of the determination that Judge Frankish found the Appellant's oral evidence to be incoherent. However, Judge Frankish managed to discern the main points which the Appellant was attempting to make which were that he had practised in the UK as a doctor in psychiatry for five years and that he ought to be allowed to continue. He had been wanting to return home but the Respondent had retained his passport. The Appellant claimed to have paid a lot of money in fees for a first-class service but had instead received what he described as a shoddy service.
6. The judge's findings and conclusions are encapsulated at paragraph 9 of the determination. The judge rightly points out that the onus is upon the Appellant to demonstrate that he earned the requisite minimum of £16,000 for twelve consecutive months during the preceding fifteen. It should be easy for a doctor to prove that. However, the bank statements which the Appellant provided served to corroborate only £3,008 of earnings. Therefore the Appellant entirely failed to discharge the burden of proof. No Article 8 issues were brought to the judge's attention. The Appellant failed the twenty years' test under the current Rules and no compelling circumstances were brought to the judge's attention to justify separate consideration outside the Rules pursuant to the recent Gulshan guidance. On that basis the appeal was dismissed.

7. An application for permission to appeal was submitted by the present representatives on 6th June 2014. The Appellant was previously represented by Cape Hill Solicitors of 54 Waterloo Road, Cape Hill, West Midlands who had submitted the Appellant's Notice and Grounds of Appeal. It is not entirely clear from the Tribunal file at which point the Appellant changed representatives.
8. Permission to appeal was granted in the First-tier Tribunal on 29th June 2014. The First-tier Judge who granted permission considered it arguable that Judge Frankish had given inadequate reasons for concluding that the Appellant did not meet the requirements of Appendix A of the Immigration Rules because he had only substantiated earnings of £3,008 by reference to his bank statements. The Respondent's representative filed a response under Rule 24 on 1st July 2014. In summary, the Respondent submitted that the First-tier Judge directed himself appropriately and made no error of law.
9. Thus the matter came before me in the Upper Tribunal on 18th August 2014. The Appellant was present and representation was as mentioned above. After hearing submissions from both representatives I reserved my decision on the error of law issue which I now give.
10. For the Appellant, Mr Mahmood (perhaps sensibly) did not adopt a fourteen page skeleton argument submitted by the Appellant's representatives in a bundle of documents received at Stoke on 15th August 2014. Mr Mahmood referred to paragraph 9 of the determination, which I have already summarised above, and submitted that this was simply inadequate for disposing of the entire appeal.
11. Mr Mahmood referred to entries shown in the Appellant's HSBC advance bank statements at pages 76, 77 and 79 of the appeal bundle. These documents also appear at Annex E in the Respondent's bundle which indicates that they were before the decision-maker when the decision to refuse was taken. Unhelpfully, the relevant entries have been completely obliterated by highlighting in the photocopying process but I was informed that they are for £3,162.35, £1,782.28 and £3,799.84 respectively. All credits appear to be from Tanina Consulting Ltd, a company of which the Appellant claims to be the sole director and shareholder.
12. As I observed to Mr Mahmood, whilst one appreciates the distinction between a limited company and a private individual, these credit entries in the Appellant's bank statements merely demonstrated that he transferred funds to himself from his own limited company. There is nothing in documentary form to indicate the origin of these funds and there is certainly nothing to indicate that they represent earnings from the Appellant's claimed medical practice. Mr Mahmood accepted that no documentary evidence had been submitted prior to the decision to demonstrate that the Appellant was in receipt of earnings as a doctor.
13. For the Respondent, Mrs Heath submitted that the First-tier Tribunal's determination disclosed no error of law. The date of decision was 6th February 2013. All the documents in the appeal bundle from page 109 to 150 had been sent on 13th February 2013, which was approximately a week after the Respondent's decision and were therefore not before the Home Office when the decision was taken. Therefore this material was not admissible.

14. Mrs Heath submitted that paragraphs 8 and 9 of the determination were sufficient to deal with the material which was before the First-tier Tribunal. There was a single issue for the Tribunal to decide and therefore a brief decision was adequate.
15. I agree with Mrs Heath. Having looked carefully at the documents which were before the First-tier Tribunal, it is apparent that the Appellant has failed to rebut the Respondent's finding that only £3,008 of earnings could be corroborated by the documents supplied. Therefore, the Respondent was justified in awarding no points under Appendix A for earnings. The decision was therefore in accordance with the law.
16. So far as Article 8 is concerned, this has been addressed by the First-tier Judge at paragraph 9 of the determination, as mentioned above. I note that in the Appellant's original handwritten Grounds of Appeal he claims that the decision is unlawful because it is incompatible with his rights under the European Convention on Human Rights. No details have been supplied in support of that bare assertion and no details were brought to the attention of the First-tier Judge. It was not pursued by Mr Mahmood before me.

DECISION

The making of the decision by the First-tier Tribunal did not involve the making of a material error on a point of law. I uphold the determination and dismiss the appeal.

No anonymity direction is made.

Signed

Date 20th August 2014

Deputy Upper Tribunal Judge Coates