IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/26734/2013
IA/26758/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 August 2014	**On 18 November 2014**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

PARESH DHIRUBHAI JADAV (FIRST APPELLANT)
KINJALABEN PARESH JADAV (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr V Makoi, Maalik & Co
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants, Paresh Dhirubhai Jadav and Kinjalaben Paresh Jadav, are citizens of India. They are husband and wife. I shall refer to the first appellant as "the appellant" in this determination; the second appellant is the first appellant's spouse and dependant upon his appeal. The appellants were refused further leave to remain as a Tier 4 (General) Student and dependent spouse by decisions of the respondent dated 14 June 2013. They appealed to the First-tier Tribunal (Judge Mailer) which,

in a determination promulgated on 4 April 2014, dismissed the appeal. The appellants now appeal, with permission, to the Upper Tribunal.

2. The appellant had made a number of applications for leave to remain in the United Kingdom as a student migrant. The issue in the appeal which is determinative concerns the appellant's failure to claim 30 points in the category "Attributes – Confirmation of Acceptance for Studies". The determination at [36] records:

> [The appellant] was referred to paragraph 120-SD of Appendix A. The specified documents that must be provided are identified. In the case of evidence relating to previous qualifications the appellant must provide, for each qualification, the evidence set out. He said he forgot to do so because he was in a rush.

3. The relevant party of paragraph 120-SD of Appendix A provides as follows:

(a) In the case of evidence relating to previous qualifications, the applicant must provide, for each qualification, either:
- (i) The original certificate(s) of qualification, which clearly shows:
  - (1) the applicant's name,
  - (2) the title of the award,
  - (3) the date of the award, and
  - (4) the name of the awarding institution;
- (ii) The transcript of results, which clearly shows:
  - (1) the applicant's name,
  - (2) the name of the academic institution,
  - (3) their course title, and
  - (4) confirmation of the award;

4. The list of documents required included a postgraduate diploma in hospitality and tourist management; professional graduate diploma in information technology; advanced diploma in information technology; diploma in information technology (London Community Training College). The refusal letter noted that the appellant had failed to provide those items and that "it has therefore been decided that you have not met the requirements and no points have been awarded for your CAS".

5. At [72-73] the judge found:

> It is evident that the appellant has not provided all the required specified documents. That evidence should have been provided at the date of application. This was a new application and the appellant was not excused from compliance with the rigorous requirements of paragraph 120-SD(a) of Appendix A to the Rules.
>
> The fact that the appellant may have provided such a document/s several years earlier does not constitute a permissible basis for omitting them in the current application. It is not the duty of the respondent to search for

any potential documents that may or may not have been submitted in the past.

6. The appellant asserts that the academic institution which had issued the CAS had sight of the necessary documents and it was therefore not necessary for the respondent to also see them in support of the application. That submission is contrary to the plain wording of paragraph 120-SD which I have quoted above. Had the Rule only provided that the appellant produce a CAS, he would have been awarded the 30 points which he had claimed.

7. Secondly, paragraph 245AA of the Immigration Rules is of little assistance to the appellant. The qualification documents were not (for example, like a series of bank statements) documents in a sequence. Rather, they were certificates relating to specific and separate qualifications. Further, the fact that the documents may have been supplied with previous applications does not assist the appellant. The appellant had not supplied the missing documents at all, let alone only some documents in an incomplete sequence. Also there was no suggestion that he had supplied documents which did not contain all of the necessary information. In any event, it is at the discretion of the Secretary of State to request further documents ("*may* contact the applicant or his representative …"). There is also considerable force in Mr Tufan's submission to expect the respondent to have to refer back to previous applications to find documents which may or may not have been submitted with those applications and place impossible demands upon the respondent's administration. I accept his submission that each and every application for further leave to remain should be supported by all required documents and that it matters not that documents may have been supplied with previous applications. Every applicant for leave should, on the occasion of making any application, ensure that all the necessary documents are sent to the respondent.

8. I also note that the appellant made his application on 3 May 2013. His only reason for failing to supply the required documents was that he had been "in a rush" and no explanation has been given as to why he did not send the missing documents to the respondent before the application was determined in June 2013. It is not clear to me why the respondent (or, indeed, the Tribunal) should assist the appellant when he has made no attempt to help himself.

9. Mr Makoi also raised the questions of the respondent's flexibility policies. However, as the Upper Tribunal noted in *Durrani* (Entrepreneurs: bank letters; evidential flexibility) [2014] UKUT 295 (IAC)) "a question of whether a policy exists is one of fact. There is no evidence that some policy on evidential flexibility, independent and freestanding of paragraph 245AA, survived the introduction of that paragraph in the Immigration Rules". Mr Makoi was unable to provide me with evidence that the appellant's application was covered by such

a policy, even assuming that one continued to exist at the time of his application.

10. In my opinion, the First-tier Tribunal adopted the correct approach and, on the facts, reached the only available outcome in this appeal. In the circumstances, the appeal is dismissed.

NOTICE OF DECISION

11. This appeal is dismissed.

No anonymity direction is made.

Signed Date 8 August 2014

Upper Tribunal Judge Clive Lane