



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/27048/2014

THE IMMIGRATION ACTS

Heard at Field House
On 9 December 2014

Determination Promulgated
On 17 December 2014

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

MR VIKAS
(No Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Hashmi of counsel instructed by Visa Expert

For the Respondent: Mr M Shilliday a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of India who was born on 8 May 1983. He has been given permission to appeal the determination of First-Tier Tribunal Judge Fox ("the FTTJ") who dismissed his appeal against the respondent's decision of 9 June 2014 to refuse to grant him further leave to remain in the UK as a Tier 4 Migrant student. The respondent also

made a decision to remove the appellant from the UK pursuant to section 47 of the Immigration and Asylum and Nationality Act 2006.

2. The respondent refused the application on the basis that the appellant did not meet the maintenance requirements of the Immigration Rules. His application was made on 4 April 2014 and he needed to show that he had access to £1600 for at least 28 days immediately preceding the date of his application. He had not provided bank statements dated no more than one month prior to the date of the application.
3. The appellant appealed submitting that the respondent's decision was not in accordance with the Immigration Rules or in the alternative that the respondent should have exercised discretion differently.
4. The appellant asked that the appeal be determined on the papers which is what the FTTJ did on 27 August 2014. He found that the "appellant's application is dated 1 April 2014". The appellant had failed to demonstrate either possession of £1600 between 4 March 2014 and 1 April 2014 or, on a more generous interpretation, 3 March 2014 to 31 March 2014. The appellant had only provided financial evidence covering the period between 31 December 2013 and 1 March 2014.
5. The FTTJ found that the respondent had not failed to apply her policy designed to address minor deficiencies in the presentation of documents. The appellant had relied on a document which was defective in its entirety. The appeal was dismissed.
6. The appellant applied for permission to appeal which was granted by a judge in the First-Tier Tribunal. The grounds submit that the FTTJ erred in law by misapplying the provisions of paragraph 1A(h) of Appendix C to the Immigration Rules. The relevant portion provided that; "the end of the 90 day period and 28 day period... will be taken as the date of the closing balance on the most recent of the specified documents and must be no earlier than 31 days before the date of the application." It is argued that the appellant submitted a bank statement with the closing date of 1 March 2014. As the date of application was 1 April 2014 the appellant had submitted a bank statement with a closing date no earlier than 31 days before that date. It was clear that the required funds had been maintained for that period. The only reason the respondent had not considered the appellant's bank statement was because she had concluded that the date of application was 4 April 2014. This was incorrect. The date of application was 1 April 2014. The FTTJ decided this in the appellant's favour in paragraph 11 of the determination.
7. Ms Hashmi submitted that the appellant made an online application on 1 April 2014 and that this was the date of application. One of the permitted

ways of making an application was to do so online. Having done so he was required to post a paper copy of the application with the accompanying documents and again this is what he did. He received an acknowledgement email from the respondent. He paid the required fee by credit card on 1 April 2014. The date on the application form was 1 April 2014.

8. Ms Hashmi argued that the bank statement supplied by the appellant to the respondent showed the required amount for the necessary period. The currency was rupees. At this point Mr Shilliday conceded that if I was against him on the point he was seeking to raise as to the means by which the application was made and the date of application then the bank statement did show the required amount for the necessary period subject only to converting rupees into sterling for which purpose the application should go back to the respondent for further consideration.
9. Ms Hashmi submitted that the appropriate rate of currency conversion on 1 March 2014 was 103.52 rupees to the pound. This meant that the minimum balance equated to £10,016.40, well in excess of the £1600 required. She asked me to find that the FTTJ erred in law in his application of the requirements of the Rules to the evidence before him. I was asked to set aside the decision and re-make it, allowing the appellant's appeal on the basis of the evidence before the FTTJ.
10. Mr Shilliday submitted that the date of application was 4 April 2014. This was what was said in the refusal decision of 9 June 2014. He produced and took me to the Home Office guidance on "specified application forms and procedures" and relied on this for the submission that, under paragraph 34G(i) of the Immigration Rules, the date of posting was to be treated as the date of application. The Royal Mail "SD1" postage paid stamp reproduced at E1 of the respondent's bundle showed that the application form had been posted on 4 April 2014. It was not accepted that an application had been made online, although he did accept that the email produced by the appellant had been sent to him by UK Visas and Immigration.
11. I find no merit in these submissions. Whilst the refusal letter does state that the application was made on 4 April 2014 no reasons are given for this conclusion. In paragraph 5 the FTTJ found that the application was dated 1 April 2014. There is no cross-appeal by the respondent challenging this. However, even if this is not sufficient to dispose of the point as to the date of application I find that the respondent has not established that the date was 4 April 2014.
12. Paragraph 34G in Part 1 of the Immigration Rules provide;

34G. For the purposes of these rules, the date on which an application or claim (or a variation in accordance with paragraph 34E) is made is as follows:

- (i) where the application form is sent by post, the date of posting,
- (ii) where the application form is submitted in person, the date on which it is accepted by a Home Office premium service centre,
- (iii) where the application form is sent by courier, the date on which it is delivered to the Home Office, or
- (iv) where the application is made via the online application process, on the date on which the online application is submitted.

13. If all that the appellant did was to send his application by post then I agree that under 34G(i) the application would be made on the date of posting. However, if the application was made online under 34G(iv) then the application would be made on the date on which the online application was submitted.
14. The respondent submits that the application was made only by post and that the Royal Mail "SD1" postage paid stamp reproduced at E1 of the respondent's bundle showed that it was posted on 4 April 2014. The appellant submits that the application was made online and that once this had been done Home Office procedures required him to print off the completed application form and submit it by post with any accompanying documents on which he relied. The existence of a procedure in this form is borne out by the Home Office guidance to which I have referred. This indicates that an applicant can apply and pay their application fee online "using the "print and send" form before they print off the completed application form and send it to the Home Office with their supporting documents. There is support for the appellant's contention that he followed this procedure in the email sent to him from UK Visas and Immigration dated 1 April 2014 which states; "you have completed your application Tier 4 Student "print and send" application online".
15. I find that the appellant has established, to the standard of the balance of probabilities, that he made an online application on 1 April 2014, in a manner acceptable to and accepted by the respondent and that this should be treated as the date of his application.
16. On behalf of the respondent Mr Shilliday conceded that if I reached this conclusion as to the date of the application then the bank statement did show the required amount for the necessary period. He added the rider that this was subject to converting rupees into sterling for which purpose

the application should go back to the respondent for further consideration. I find that this is not necessary. I agree with Ms Hashmi and find that the appropriate rate of currency conversion on 1 March 2014 was 103.52 rupees to the pound. This means that the minimum balance equated to £10,016.40, well in excess of the £1600 required.

17. Albeit that this was entirely understandable in view of the absence of any assistance by way of submissions I find that the FTTJ erred in law. The evidence before him did not support the conclusion that the relevant period for the bank statements was either 4 March 2014 to 1 April 2014 or 3 March 2014 to 31 March 2014. I set aside the decision. I find that the date of application was 1 April 2014. I find that applying the appropriate rate of currency conversion combined with the concession made by Mr Shilliday the appellant has established that he meets the requirements of the Immigration Rules
18. I have not been asked to make an anonymity direction and can see no good reason to do so.
19. I remake the decision and allow the appellant's appeal under the Immigration Rules.

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Signed
Upper Tribunal Judge Moulden

Date 13 December 2014