



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/41181/2013

THE IMMIGRATION ACTS

Heard at Field House
On 16th July 2014

Determination Promulgated
On 5th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE FRANCES

Between:

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MAHABUBUR RAHMAN JUNED

Respondent

Representation:

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer
For the Respondent: In person

DETERMINATION AND REASONS

1. I shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of Bangladesh born on 22nd August 1987. His appeal against the Respondent's decision of 26th September 2013 refusing to vary leave to remain and the decision to remove him under section 47 of the Immigration, Asylum and Nationality Act 2006 was allowed by the First-tier Tribunal in so far as the decisions were not in accordance with the law. The Secretary of State appealed.
2. Permission to appeal was granted by First-tier Tribunal Judge Reid on 3rd June 2014 on the grounds that First-tier Tribunal Judge Phull misdirected herself in law in her application of the evidential flexibility policy in failing to have regard to SSHID v Rodriguez [2014] EWCA Civ 2.

3. Mr Bramble relied on the grounds of appeal and submitted that the Judge wrongly relied on the Upper Tribunal decision in Rodriguez which had been quashed by the Court of Appeal. Paragraph 245AA of the Immigration Rules did not apply in this case because the Appellant had failed to provide bank statements. The Appellant claimed that he had failed to do so because there was some confusion as to the amount of maintenance required. At the date of the Respondent's decision, the Appellant had provided no bank statements at all. The bank statements before the First-tier Tribunal did not assist the Appellant because the funds were not in the account in Bangladesh on 20th August 2013 and the Appellant's closing balance in the UK was in debit. The Appellant did not have the required funds for the 28-day period in any event. The Appellant could not succeed under the Immigration Rules and the Judge erred in law in allowing the appeal.
4. The Appellant explained the confusion over the amount of maintenance and stated that he did not have time to obtain the evidence required. He was initially advised, by an agent, to show funds of £2000, but on completion of the form, he was advised that he needed to show funds of £9,000. He sent his application to the Home Office with a letter that maintenance evidence would follow. He immediately sought evidence of funds from Bangladesh, but his application was refused before he received this evidence.
5. I find that the Judge erred in law in finding that the evidential flexibility policy applied in this case. She wrongly relied on the case of Rodriguez (Flexibility Policy) [2013] UKUT 00042. I set aside the decision (and the fee award) of 9th May 2014, allowing the appeal in so far as the Respondent's decision of 26th September 2013 was not in accordance with the law. The Respondent's appeal to the Upper Tribunal is allowed.
6. I remake the decision as follows. At the time of the application, the Appellant failed to provide any bank statements as evidence of maintenance funds. This was not a case where a document in a sequence was missing or a document was in the wrong format, or a copy. Paragraph 245AA of the Immigration Rules did not apply.
7. The application was made on 22nd August 2013. The bank statement from Bangladesh showed that on 21st August 2013 the Appellant had 115,000 Lac in his account. On 25th August 2013, he had 1,150,000 Lac in his account. The Appellant's UK bank account showed that the Appellant was overdrawn on 20th August 2013. He did however hold over £2000 in his account from 7th to 18th August 2013. I find that the Appellant had failed to show on the balance of probabilities that he held the required funds for the 28-day period prior to the application.
8. Accordingly, the Appellant has failed to show that he satisfied the maintenance requirements of Appendix C and paragraph 245ZX(d) of the Immigration Rules. There was nothing to prevent the Appellant from making a further application. I find that he has failed to show that Article 8 is engaged. The Appellant's appeal is dismissed under the Immigration Rules and on human rights grounds.

9. I find that the Judge erred in law in allowing the appeal and I set aside the decision, dated 9th May 2014, and remake it as follows: The Appellant's appeal against the refusal to vary leave and the decision to remove him is dismissed.

Deputy Upper Tribunal Judge Frances
29th July 2014