



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/49308/2013

THE IMMIGRATION ACTS

Heard at Field House
On 24 October 2014

Determination
Promulgated
On 4 November 2014

Before
DEPUTY UPPER TRIBUNAL JUDGE DRABU CBE

Between
MR JINS THOTTATHIL KURUVILA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ANONYMITY DIRECTION IS NOT MADE

Representation:

For the Appellant: Mr B Hawkins of Counsel instructed by Law & Lawyers Solicitors
For the Respondent: Mr P Nath, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a national of India. He was granted leave to enter the United Kingdom as Tier 4 (General Student) on 11 November 2010 which was valid until 21 September 2012. His application for further leave to remain as Tier 4 (General Student) was refused on 14 November 2013 on the ground that the respondent was not satisfied that the applicant had demonstrated availability of maintenance funds for 28 consecutive days prior to the date of application. Reference was made to Paragraph 1 A (h) of the Appendix C of Immigration Rules.

2. The appellant's appeal was heard by Judge James, a Judge of the First Tier Tribunal on 23 July 2014 at Hatton Cross. The Judge dismissed the appeal. In the course of hearing submissions the Judge noted the HOPO's confirmation that further research had shown that the loan issued to the appellant had been made by a designated bank under the rules and guidance. However in dismissing the appeal Judge rejected the argument advanced on behalf of the appellant that as the guidance issued for Appendix C refers to the time period of 28 days for all other funds, and not for loans, it means that the designated sum is not required to be held for 28 days if it is a loan.
3. The appellant sought and was granted permission to appeal to the Upper Tribunal by Designated First-Tier Tribunal Judge Zucker on 15 September 2014. In granting permission the Judge said, "The grounds include the submission that the decision of the Respondent was not in accordance with the law, because it was made against the Respondent's own stated policy as set out in the Policy Guidance. It is submitted that as the Appellant was relying on a loan, he did not need to demonstrate that the funds were actually in his account, only that there was no condition to the release of funds other than the application being successful."
4. At the hearing before me Mr Nath contended that as the loan was available as from 3 August 2013, the appellant did not meet the requirement under Paragraph 1 A (h) of the Appendix C of the Immigration Rules and therefore the decision of Judge James was not in material error of law.
5. Mr Hawkin argued that such interpretation is not consistent with facts as well as logic. He pointed out that the application was made on 21 August. The loan had become available as from 3 August 2013 and 28 days from 3 August meant that the appellant should have had the funds on 1 September reminding me that the date of decision was 14 November 2013. He asked that the decision of Judge James be reversed and that the appeal be allowed.
6. I reserved my decision which I now give. The contention of the appellant that sub-para (d) of paragraph 1B of Appendix C which concerns applicants applying as a Tier 4 Migrant relying on a loan letter from a designated financial institution makes no reference to the 28 day period but simply requires that the loan letter is dated "no more than 6 months before the date of the application" is in my view well founded and logical. The rationale of the 28 day period does not apply where maintenance requirement is supported by loan from a designated financial institution. Such interpretation makes good sense and takes care of any potential mischief. Also in any event in this case the appellant's loan letter meant that the funds had been available to him for a 28 day period by the time of the respondent's impugned decision.
7. Accordingly the decision of Judge James is set aside as being in material error of law and in remaking the decision this appeal is allowed for the reasons given above.

K Drabu CBE
Deputy Judge of the Upper Tribunal.
28 October 2014