



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/23296/2014

THE IMMIGRATION ACTS

Heard at Manchester  
On 6<sup>th</sup> January 2015

Determination Promulgated  
On 9<sup>th</sup> January 2015

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR FARRUKH SHAHZAD

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss S Iqbal (Rana and Co, Solicitors)

For the Respondent: Mr G Harrison (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Appellant, a Pakistani national who had made an application for further leave to remain as a Tier 1 entrepreneur migrant. That application was refused on 16th May 2014. He appealed to the First-tier Tribunal and in a determination promulgated on 10th September 2014 Judge Brookfield dismissed the appeal.
2. Permission to appeal to the Upper Tribunal was granted by a Judge of the First-tier Tribunal on 23rd October 2014. Thus the matter comes before me. My first task is to decide whether the First-tier Tribunal Judge made an error of law and if so whether and to what extent the decision should be set aside.

3. The grounds allege that the Judge made an error in basing her decision on her erroneous belief that the Respondent had sent three e-mails to the Bank Alfalah in Pakistan in an attempt to verify a letter when in fact only one e-mail had been sent. She erred in her finding at paragraph 11 (iii) of the determination that on a balance of probabilities the Respondent had sent three verification request e-mails to the bank and the bank did not respond to any of them. Furthermore the Appellant had produced a letter from the bank indicating that no such e-mail had been received.
4. The grounds also assert that the judge erred in finding that the Respondent had had insufficient time to verify the letter adduced in the bundle.
5. On behalf of the Respondent, Mr Harrison asserted that any error was not material and the simple fact is that the letter was and remains unverified.
6. The facts of this case are that the Appellant entered the UK as a student in September 2010. He was then given leave to remain as a post study worker and it was while he had that leave that he made the current application as a Tier 1 (Entrepreneur) Migrant. The sole reason for the refusal appears to have been the Secretary of State's inability to verify the document provided by the Appellant from Alfalah Bank Limited which led her to conclude the letter was not genuine.
7. The judge set out her findings and reasons in paragraph 11 of the determination and the 7 sub-paragraphs thereof.
8. At 11 (i) the Judge noted that the Respondent, in the refusal indicated the Appellant had provided a letter from Alfalah Bank limited as evidence that he has access to £50,000 belonging to Mr Touseef Haider. The Judge says in that paragraph that the Respondent e-mailed the bank to verify the letter on 14th April, 29 April and 12 May 2014 and that no response was received to any of those e-mails.
9. In his grounds of appeal the Appellant pointed out that his team member, a Mr Zeeshan Umer was reliant on the same funds in the same bank account and his appeal was allowed. He suggested that e-mail is not a reliable form of communication as transmission can be interrupted or alternatively mail can go straight to a junk box. The Appellant asserted that the Respondent should have contacted him if she was having difficulties obtaining a response from the bank. The Judge rejected those submissions as she was entitled to do.
10. The nub of the Appellant's argument before the Upper Tribunal is that the Judge was mistaken about the number of e-mails which meant that her finding at paragraph 11 (iii) that on the basis of three unanswered emails and a late produced copy letter that could not be verified, the document remained unverified.

11. The Appellant relied on various cases and on the principle of fairness to support his appeal and argued that paragraph 245AA of the Immigration Rules, which states that the Respondent is only permitted to discount a specified document after she has taken reasonable steps to verify it, was not met in this case because the Secretary of State had not taken sufficient steps. It was argued that if the Secretary of State was having difficulty contacting the bank she should have contacted the Appellant. The Judge rejected that argument noting that paragraph 245AA does not require the Respondent to contact an Appellant if a bank fails to verify documents.
12. At paragraph 11(iv) the Judge noted that the Appellant had provided a copy letter from the bank dated 27 August 2014 which was in his appeal bundle submitted to the Tribunal on 1st September. The Judge observed that she had not been provided with the original of the letter and also that the Respondent was entitled to be given the opportunity to verify that document and there had been insufficient time in which to do so. The original was not provided and the hearing was on 2nd September. The Judge was entitled to make that finding.
13. At paragraph 11 (v) the Judge noted that the financial sponsor and owner of the bank account in question provided an e-mail sent to him from the bank indicating that the bank had never received any e-mail from the Respondent. The Judge however also observed that he had not produced any evidence that he had asked the bank to contact the Respondent directly; rather he had produced another unverified letter.
14. I have looked at the documents provided in the Respondent's bundle in particular the e-mails. The first document is the letter submitted with the original application purporting to be from Bank Alfalah Limited confirming the availability of funds. There is then an e-mail sent by Tier 1 Entrepreneur Verifications at the Home office to the High Commission in Islamabad chasing a reply to their original request for verification by the bank. In response to that chasing e-mail the High Commission in Islamabad replied on 30th May indicating that there had been no response from the bank and therefore the result was inconclusive. Following a request from Tier 1 Entrepreneur Verifications for copies of e-mails sent to the bank a response was received that they could only send the last one as the previous one had been sent by an officer who had since left and they could not access that person's e-mail account. There is therefore only a copy of one e-mail to the bank provided in the Respondent's bundle although there is a clear reference to others.
15. It seems clear that the Judge was mistaken as to the precise number of e-mails in the bundle. What seems to have in fact happened is that the Tier 1 Entrepreneur Verifications Department of the Home Office in the UK had sent more than one e-mail to the British High Commission in Islamabad asking them to check. It is also clear that more than one e-mail was sent to the bank although only one is copied in the bundle. However, while there is only one e-mail in the

bundle it is also the case that the same e-mail was sent to four different people at the bank. It was sent to two and copied to two others. That is the same as sending four emails. None of those four people responded. The mistake by the Judge was thus wholly irrelevant and immaterial. She believed that there were three unanswered e-mails whereas in fact there were four.

16. It is also the case, as noted by the Judge that it is not acceptable to produce a copy of a letter purporting to verify a document only very shortly before the hearing so that the Respondent is unable to verify it. Accordingly, I find that the Judge made a mistake of fact and while that mistake impacted on her decision it is quite clear that on the basis of the evidence before her, no Judge would have reached a different conclusion. The simple fact is that the British High Commission did attempt to contact four different people at the bank to verify a document and none of them responded. The only evidence the Appellant could come up with was a copy of a document produced far too late to be verified. Knowing that that was the criticism levelled at the Appellant by the First-tier Tribunal Judge it was of course open to the Appellant and those advising him after the determination was promulgated and after permission to appeal had been granted, to contact the bank and ask it to e-mail the Respondent direct verifying the documents. An application could have been made to adduce additional evidence before the Upper Tribunal. None of this was done. It would have been a simple matter to produce satisfactory verification evidence if indeed the document is genuine. Failure to do so strongly indicates that it is not. As Mr Harrison pointed out, however many e-mails were in fact sent, the simple fact of the matter is that the document has not been verified.
17. Accordingly, I find the mistake of fact in this case did not amount to a material error of law. Had the Judge not made that mistake the result would have been the same.
18. The appeal to the Upper Tribunal is dismissed.

Signed

Dated 8<sup>th</sup> January 2015

**Upper Tribunal Judge Martin**