



**First-tier Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/38171/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 11th May 2015**

**Decision and Reasons Promulgated
On 13th May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**MR MALIK-ASIF IQBAL
(NO ANONYMITY DIRECTION MADE)**

Respondent

DECISION AND REASONS

1. The application for permission to appeal was made by the Secretary of State but for the purposes of this decision I shall refer to the parties as they were described before the First Tier Tribunal.
2. The appellant is a citizen of the Pakistan born on 20th May 1982 and on 30th July 2014 he applied for leave to remain as a Tier 4 (General) Student Migrant under the points-based system but his application was refused on 10th September 2014 and a decision to remove him further to Section 47 of the Immigration, Asylum and Nationality Act 2006 was made.
3. The Secretary of State refused the application under paragraph 245ZX(d) with reference to paragraph 1(A)(c) of Appendix C of the Immigration Rules. The appellant needed to show that he had the required funds of £7,880 and yet his

account showed only a balance of £1,000.03 on 30th July 2014. He therefore did not have the level of funds over the specified 28 day period to be granted leave.

4. The appeal was heard by First Tier Tribunal Judge Butler who allowed the appeal with reference to paragraph A34 (c). The judge accepted that evidence of the funds had not been established as at 30th July 2014 but found that paragraph 34(C)(b) provided an opportunity for the decision maker to correct any omission or error and the respondent did not exercise a discretion to request evidence of other funds.
5. An application for permission to appeal was made by the respondent on the basis that A34C referred to the validity of an application and no such challenge was made by the Secretary of State. The judge's reference was not relevant and the paragraph cited offered no support for the judge's conclusions. Permission was granted by First Tier Tribunal Judge Brunnen.

Conclusions

6. It is not entirely clear to which rule the judge was referring. I note that A34(iii)(c) referred to further documents being supplied within 15 days. Paragraph 34 C refers to an invalid application which will not be considered. However, further to Sections 85(A)(3) and (4) of the Nationality Immigration and Asylum Act 2002 the Tribunal may only consider evidence which was submitted in support of and at the time of making the application to which the immigration decision related.
7. The question is whether evidence of the funds was required at the date of the application or could he show evidence of those funds prior to the making of the decision?
8. Further to Paragraph 245ZX(d) the appellant must have a minimum of 10 points under paragraphs 10 to 14 of Appendix C.
9. Paragraph 1A(a) of Appendix C of the Immigration Rules requires that 'the applicant must have the funds specified in the relevant part of Appendix C at the date of the application'.
10. Paragraph 1A(c) of Appendix C of the Immigration Rules requires that 'if the applicant is applying as a Tier 4 Migrant the applicant must have had the funds referred to in (a) above for a consecutive 28 day period of time'.
11. Paragraph 1A(h) of Appendix C of the Immigration Rules states:

"the end date of the 90 day and 28 periods... 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".
12. Further to Appendix C points would only be awarded if the funds shown in the relevant table were available in the manner specified in Appendix C.

13. I repeat that Paragraph 1A(a) of Appendix C of the Immigration Rules explicitly requires that 'the applicant must have the funds specified in the relevant part of Appendix C at the date of the application'. The appellant supplied a CAS which post dated this application but his application could not be later than 30th July 2014 because that is the date that he told me his leave expired. The appellant could only show that he had the relevant funds for the 28 day period after the date of the application and thus he could not succeed under the Rules.
14. I heard from the appellant at the hearing, as indeed did the judge, that there had been an incident in his family home preventing evidence being adduced but this unfortunately does not assist him.
15. **SSHD v Rodriguez** [2014] EWCA Civ 2 confirmed the proposition that '*there is no unfairness in the requirement in the PBS that an applicant must submit with his application all of the evidence necessary to demonstrate compliance with the rule under which he seeks leave*'. Paragraph 92 confirmed '*Taken overall, the Evidential Flexibility process instruction is demonstrably not designed to give an applicant the opportunity first to remedy any defect or inadequacy in the application or supporting documentation so as to save the application from refusal after substantive consideration*'. There is no requirement that the Secretary of State should search out for further documentation in this case.
16. The Judge erred in law materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007) and remake the decision under section 12(2) (b) (ii) of the TCE 2007 and for the reasons given above dismiss the appeal.

Order

The appeal of Mr Malik-Asif Iqbal is dismissed.

No anonymity order has been made.

Signed

Date 11th May 2015

Deputy Upper Tribunal Judge Rimington