



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/40370/2014

THE IMMIGRATION ACTS

Heard at Field House

**On 14 October 2015
Oral judgment**

**Decision & Reasons
Promulgated
On 2 November 2015**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**ASHRAF HOSSAIN HEMAL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance.

For the Respondent: Mr Ian Jarvis, Home Office Presenting Officer.

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal (FTT) Judge Morgan promulgated on 18 April 2015 following a hearing at Taylor House on 30 April 2015. The judge noted on that occasion that there was no attendance by either the appellant or the appellant's representatives. In paragraph 3 of the FTT determination the judge notes "neither the appellant nor his representative attended the hearing before me. However they did provide an appellant's bundle with an accompanying letter requesting for the matter to be considered on the papers." The

judge, as the judge was entitled to do, conducted a hearing. There was a Presenting Officer present. Notice had been given of the date, time and place of the hearing. The judge noted that it was not his or her role to review the decision, went on to look at the material, and found in paragraph 9 that the respondent's decision was unlawful.

2. The basis of the refusal was that the appellant had applied for leave to remain as a Tier 4 (General) Student Migrant. That application was refused in a notice of 23 September 2014 as it was found that the appellant could not satisfy the requirements of paragraph 245ZX of the Immigration Rules concerning leave to remain as a Tier 4 Migrant, as the Secretary of State was not satisfied the appellant was entitled to 10 points claimed under the maintenance/funds provision because a bank statement provided in support of the application was from Dutch-Bangler Bank, an institute the Secretary of State stated was on the list of unacceptable financial institutions published by the respondent.

3. The judge was clearly aware that that was a key issue. In paragraph 6 the judge found as follows:

“The respondent within the respondent's bundle provided no evidence that the bank in question was on the list of unacceptable financial institutions. Mrs Ojo had helpfully obtained this information but unfortunately there was no evidence as to when the bank had been placed on this list. Mrs Ojo also provided a copy of the Court of Appeal jurisprudence in **EK (Ivory Coast) [2014] EWCA Civ 1517**. (the fairness jurisprudence).”

4. The appellant's evidence which the judge found he had no good reason not to accept, and which was not impugned by the respondent in the witness statement, stated that when he submitted his application the bank in question was not on the list of unacceptable financial institutions and that it had been placed on the list subsequent to him making the application and that the points for CAS had been awarded by the respondent and that the course fee had been paid in its entirety.

5. The Secretary of State challenges that decision on the basis that at the date of the application, 18 August 2014, the list of unacceptable financial institutions to be found in Appendix P of the Immigration Rules showed that Dutch- Bangler Bank was included in the list in Appendix P, Table 11, and was therefore a prohibited organisation at the date of application.

6. Permission was granted on the basis that it appears the bank was on the list of prohibited unacceptable financial institutions and the matter set down for the initial hearing today.

7. Again there has been no attendance by Victory Solicitors or the appellant himself. Victory Solicitors have sent a fax to the Tribunal confirming they continue to act on behalf of the appellant, claiming they were informed, presumably by their client, that owing to the predicament caused by the refusal of his application for Tier 4 (General) Student status by the

Secretary of State he has experienced financial difficulties, is not in a position to bear legal costs and therefore the solicitors will not be attending.

8. The explanation for their non attendance is noted and fully understood. What the letter does not explain or provide any basis for this Tribunal understanding is why the appellant himself has not turned up as he could turn up free of charge bar any travelling expenses, although as he lives in E16 it has not been shown that expecting him to travel to this Tribunal would be unreasonable in all the circumstances.
9. The Tribunal is satisfied that notice in accordance with the Rules setting out the date, time and place of this hearing has been served and is known to the appellant and his representatives. There is no application for an adjournment, no explanation for the appellant's failure to attend and it is therefore appropriate in all the circumstances, including the overriding objectives and the interests of justice and fairness, that the best use is made of the Tribunal time in proceeding to determine this matter in the appellant's absence.
10. I find that the judge has made an error of law material to the decision to allow the appeal. The archived copy of the Immigration Rules in force from 1 August 2014 to 20 October 2014 shows within Table 11, financial institutions that do not satisfactorily verify financial statements, the name of the Dutch-Bangler Bank Limited as one of those financial institutions.
11. At the date of the application identified by the Secretary of State in the application for permission to appeal the Dutch-Bangler Bank was therefore one of those named financial institutions and the statements provided by that establishment warrant no weight by placed upon them as they have not been shown to be reliable for the reasons set out in Appendix P which states that an institution may be included on the relevant list of those who do not satisfactorily verify financial statements if (a) on the basis of experience that it does not verify financial statements to UKBA's satisfaction in more than 50% of a sample of cases or it does not participate in specified schemes or arrangements in the country of origin where the UKBA trusts the verification checks provided by banks that do participate in those schemes. There appears therefore to be a good basis and sound reasoning for why the named bank should appear in Table 11 and in those circumstances the judge erred in rejecting the grounds and arguments put forward by the Secretary of State which were supported by verifiable evidence in the public domain.
12. The First-tier Tribunal is a specialist tribunal and although these proceedings are litigious one questions whether there was a requirement on the judge in this case to investigate further in relation to when the copy of Table 11 provided, with 'archived' written across it, actually related, albeit that there was a Presenting Officer there who could no doubt have been expected to have provided such information by way of a printout from the archived Immigration Rules.

Notice of Decision

13. I set the determination aside on the basis of that factual error made by the judge. The judge does not refer to any additional financial information which shows that the appellant has discharged the burden of proof upon him to show that he could meet the requirements of the Tier 4 (General) Student Migrant route under paragraph 276X of the Immigration Rules. There is no evidence upon which appropriate weight may be applied by this Tribunal to find that the appellant has discharged the burden of proof upon him to the required standard and accordingly I dismiss the appeal.
14. No anonymity direction is made.

Signed

Date 30 October 2015

Upper Tribunal Judge Hanson

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 30 October 2015

Upper Tribunal Judge Hanson