



IAC-FH-CK-V1

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

Appeal Number: IA/42366/2014

THE IMMIGRATION ACTS

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

**Decision & Reasons Promulgated
On 2nd December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**PARMINDER PAL SINGH KHOSA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Staunton, Home Office Presenting Officer

For the Respondent: Mr Khosa in Person

DECISION AND REASONS

1. Although the Secretary of State is the Appellant in these proceedings I will refer to the parties as they were in the First-tier Tribunal.
2. The Appellant, a national of India, appealed to the First-tier Tribunal against a decision of the Respondent dated 19th September 2014 to refuse his application for leave to remain in the UK as a Tier 4 Student Migrant. Judge of the First-tier

Tribunal VMD Fox allowed his appeal and the Secretary of State appeals with permission to this Tribunal.

3. The issue in this case is the date to be considered for the assessment of the maintenance requirements in a Points Based System appeal where the Appellant varied his application due to a change of sponsor.
4. The background to this appeal is that the Appellant made an application for leave to remain in the UK as a Tier 4 (General) Student on 29th October 2011. However, the Sponsor was not on the relevant list and an Immigration Judge allowed the Appellant's appeal against the refusal of his application on the basis that the decision was not in accordance with the law as a result of which the Appellant was granted 60 days to obtain fresh sponsorship. The Appellant obtained a new CAS on 13th April 2012 and that was submitted to the Secretary of State. The Appellant submitted a fresh Bank statement. In her decision dated 19th September 2014 the Secretary of State considered that application but decided that the Appellant should not be awarded any of the claimed points for maintenance. This was because the Barclays Bank statement submitted showed that he was not in possession of the required amount of £1,600 throughout the 28 day period prior to 13th April 2012, the date on which the variation of leave application was made.
5. When the appeal came before First-tier Tribunal Judge Fox the First-tier Tribunal Judge considered that the date of the application was 29th October 2011 and considered the bank statements in relation to the period from 1st September 2011 until 31st October 2011. The judge considered that the Appellant did in fact meet the financial requirements during that period and allowed the appeal.
6. The Secretary of State appealed to the Upper Tribunal. The Grounds of Appeal contend that the First-tier Tribunal Judge erred in that he failed to consider the decision in **Qureshi (Tier 4 - effect of variation - App C) Pakistan [2011] UKUT 00412 (IAC)**. The Upper Tribunal decided in that case that the effective date of application for the purposes of the calculation of the funding requirements, where there has been a variation substituting a new college, is the date of the most recent variation. As the Appellant's new CAS was issued on 13th April 2012 the Secretary of State submits that the Judge of the First-tier Tribunal should have considered the financial evidence as at that date and that the judge therefore erred in law.
7. At the hearing before me I heard submissions from Mr Staunton on behalf of the Secretary of State. He relied on the decision in **Qureshi** and highlighted paragraph 2 of the head note which states;

“As to the date the respondent is required to take into account for the purposes of determining the points to be awarded under Appendix C, where there has been a variation substituting a new college, it is the date of the most recent variation for the purposes of paragraph 1A(c).”

8. Mr Staunton submitted that the bank statements considered in the reasons for refusal letter referred to the correct period and that the judge erred in stating that the relevant date was 29th October 2011. He submitted that this was a material error.
9. The Appellant, Mr Khosa, submitted that Judge Fox was right. He submitted that his application was made on 20th October 2011 and that, following an appeal against the original decision, he was allowed a period of 60 days to submit a new CAS. He submitted a copy of a letter dated 12th June 2012 which he received from the Secretary of State asking for a number of documents. The Secretary of State did not ask for an up-to-date bank statement. In any event he did send a copy of the Barclays Bank statement dated 9th May 2012 even though he had not been asked for it. He said that had the Secretary of State asked for him to demonstrate that he had access to further funds he would have done so by arranging for more money to have been sent from home.
10. Mr Staunton submitted that it does not matter if more money could have been arranged to have been sent from home because the bank statements showed that the required amount was not there for all of the required period.

Error of Law

11. I have considered all of the submissions and the evidence in this case and it is clear on the basis of the guidance given in the case of **Qureshi** that First-tier Tribunal Judge Fox did err in terms of the relevant period considered for the purposes of the financial requirements. As the decision in **Qureshi** makes clear, it is the date of the variation which is the relevant date for the purposes of assessment of the maintenance requirements. In this case that date is 13th April 2012. The Barclays Bank statement is therefore the relevant bank statement for the purposes of assessment of the maintenance requirements in this case. The judge therefore erred in considering that the date of the application was 29th October 2011 and his subsequent conclusions based on the financial evidence for 28 day period prior to that date are therefore wrong in law. Accordingly I set aside the decision of First-tier Tribunal Judge Fox.

Remaking the Decision

12. As the appropriate date for the variation application is 13th April 2012 the relevant financial evidence is that contained in the bank statement from Barclays Bank dated 9th May 2012. The Secretary of State correctly identifies the relevant period in the reasons for refusal letter as being between 17th March 2012 and 13th April 2012. Between 17th March and 2nd April 2012 and 5th April and 13th April 2012 the bank statements show that the Appellant was in possession of between £1,210.24 and £1,430.24. The Appellant only met the maintenance requirements from 3rd April to 4th April 2012 when he had £2,000.87 in his account. In these circumstances the Appellant has not demonstrated that he had the required level of funds for the relevant period. In these circumstances the Appellant's appeal cannot succeed.

13. I note the Appellant's submission that he attempted to comply with what the Secretary of State had asked for in the letter dated 12th June 2012. I accept that the letter did not ask for up-to-date bank statements. I note that the Appellant said that had he been aware of the requirement to have met the financial requirements up until the date of the variation application he believes that he could have done so. However the fact is that he did not do so and that unfortunately the financial evidence has not been provided to meet the requirements of the Rules.

Notice of Decision

I dismiss the appeal under the Immigration Rules.

No anonymity direction is made.

Signed

Date: 25th November 2015

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT

FEE AWARD

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

Signed

Date: 25th November 2015

Deputy Upper Tribunal Judge Grimes