



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/47134/2014

THE IMMIGRATION ACTS

Heard at Bradford
On 22nd July 2015

Decision and Reasons Promulgated
On 31st July 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS TOUSEEF ZAHRA
(ANONYMITY NOT DIRECTED)

Respondent

Representation:

For the Appellant: Mrs R Pettersen, Senior Home Office Presenting Officer

For the Respondent: Mrs Javid, Solicitor

DECISION AND REASONS

1. The Secretary of State appeals against the decision of Judge Dearden, promulgated on the 16th March 2015, to allow the appeal against her decision to refuse the application of Miss Touseef Zahra for leave to remain as a Tier 1 (Entrepreneur) Migrant under the Points Based System. I shall for convenience refer to the parties in accordance with their status in the First-tier Tribunal: that is to say, I shall refer to Miss Zahra as “the appellant” and to the Secretary of State as “the respondent”.
2. The respondent refused the appellant’s application in the following terms:

'You have claimed 10 points for maintenance (funds) under paragraph 245DD(d) and Appendix C of the Immigration Rules but the Secretary of State is not satisfied that you have provided the specified documents to show you have been in possession of sufficient funds for the specified period, as laid out under Appendix C of the Immigration Rules.

You have provided a Lloyds Bank statement to demonstrate that you have been in possession of at least £945 of available funds for a consecutive 90 day period ending not more than 31 days before the date of your application.

This document does not meet the requirements specified under Appendix C of the Immigration Rules for the award of points because it only covers a period of 86 days.

We have therefore been unable to award points for maintenance (funds)'

3. At the hearing before the First-tier Tribunal, the appellant produced the original bank statements that she had submitted with her application, covering the period between the 11th June and 2nd September 2014. She was able to do this because the respondent had returned them to her following rejection of the application. The appellant also produced copies of additional bank statements that she claimed she had submitted with her application but the respondent had not returned to her. The latter covered the period between the 1st May 2014 and the 18th August 2014. They appeared to show that the requisite funds were available. The sole issue for the Tribunal was therefore whether the appellant had submitted the latter document with her application. That question was posed and answered at paragraph 13 of Judge Dearden's decision -

"The question is whether the Appellant also sent in the bank statements which again show a balance well in excess of £945 for the period between 1st May 2014 and 18th August 2014. The Secretary of State asserts that those statements were not sent in because they have not been returned in the Respondent's bundle. However when I am told by the Appellant through Mrs Javid that the bank statements between 1st May 2014 and 18th August 2014 were obtained by copying those in the solicitor's file that persuades me that the bank statements between those dates were in fact sent to the Secretary of State and for some unknown reason have not been returned by the Respondent. Essentially I accepted the Appellant as a credible witness. When she says that the statements between 1st May 2014 and 18th August 2014 were sent in to the Secretary of State I accept what she says about that matter. The question of the issue date was difficult to resolve. Whilst Mr Paramor maintained that there was a nefarious reason for the issue date on all the statements being described as "1" I do not necessarily conclude that such is the case."

4. Thus, the sole issue was a pure question of fact that had to be resolved by reference to the evidence that was before the Tribunal. It is not suggested that the judge did other than correctly direct himself upon the burden and standard of proof. Moreover, the grounds of appeal do not suggest that the judge's finding was one that had not been reasonably open to him upon the evidence. One might therefore have expected this to be an end to the matter and that permission to appeal would be refused.
5. However, in granting permission to appeal, Judge Ransley considered that it was arguable that Judge Dearden had erred in law by finding that the appellant was a

credible witness and thereby accepting her evidence that the questioned documents were reliable without first resolving the issues that were raised by the Presenting Officer. It is true that, at paragraph 13 (above), the Judge to some extent side-stepped the issue of the apparent anomaly concerning the issue dates shown on the copy documents. However, with due respect to Judge Ransley, the question for the judge was not whether the documents were reliable. Rather, it was whether the appellant had submitted them with her application. Moreover, the documents appeared on their face to show that the appellant had met the requirement that she was in possession of funds amounting to at least £945 for a continuous period of 90 days ending not less than 31 days prior to the date of application. It follows from this that if those documents were submitted with the appellant's application, then the time to have questioned their provenance was when refusing the application. The judge resolved this issue in the appellant's favour, and he cannot in my judgement be said to have acted perversely or irrationally in doing so.

6. The principal argument that the respondent actually raises in this appeal is that the judge, "should have, at least, remitted the case back to the Respondent in order for checks to be carried out on the bank statements produced, and for the appellant to request a certified copy from the bank" [paragraph 5 of the grounds]. However, the answer to that argument is exactly the same as that which I gave in the penultimate sentence of the previous paragraph. The grounds further argue that the judge failed to conduct "a suitable balancing exercise". However, as Judge Ransley correctly observed, the judge allowed the appeal outright under the Immigration Rules. This did not involve a "balancing exercise".

Notice of Decision

7. The appeal is dismissed.

Anonymity is not directed

Signed

Date

Judge Kelly
Deputy Judge of the Upper Tribunal