



IAC-AH-KRL-V1

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

Appeal Number: IA/02739/2015

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 10 February 2016**

**Decision & Reasons Promulgated  
On 8 April 2016**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**HAFIZ ZIA UL MUSTAFA SAYYAM  
(NO ANONYMITY DIRECTION)**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr Markus, instructed by Prolegis Solicitors  
For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Mr Hafiz Zia Ul Mustafa Sayyam, was born on 14 August 1985 and is a male citizen of Pakistan. The appellant had applied for indefinite leave to remain in the United Kingdom on the basis of ten years' lawful continuous residence. His

application was refused, directions made for his removal on 19 December 2014. The appellant appealed to the First-tier Tribunal (Judge Britton) which, in a decision promulgated on 25 June 2015 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. I find that the appeal should be allowed. I have reached that decision having heard the submissions in court of Mr Markus, for the appellant, and also Mr Diwnycz, a Senior Home Office Presenting Officer, who, although he did not concede the appeal indicated that he agreed with the submissions of Mr Markus. In the circumstances, my reasons shall be brief.
3. I find that the appeal should be allowed in respect of grounds 1 and 2. The first ground of appeal asserts that the judge wrongly summarised the effect of and/or failed to deal with the appellant's unchallenged evidence in respect of the funds which he had in his account at the time of his "in time" application for further leave to remain which was made on 31 January 2008. Further, the judge wrongly considered that the appellant's application had been rejected by the respondent because the appellant had "input his card details incorrectly when trying to make payment." The judge [17] had recorded the appellant as having said that he had given "the wrong details of his bank." However, that was not the case. Throughout his evidence and in his witness statement the appellant had explained that he had given correct details for his bank and that he was also in funds at the relevant time. The second ground of appeal concerns the burden of proof in relation to rejection of the appellant's 31 January 2008 application. The appellant relies on *Basnet (validity of application – respondent)* [2012] UKUT 113 (IAC). And also *BE (application fee: effect of non-payment)* [2008] UKAIT 89. The burden of proof rested on the respondent to show that the application had been properly rejected as invalid. The judge in the instant appeal at [19] found that "the burden of proof is on the appellant and the standard of proof is a balance of probabilities." The judge had concluded [20] that the "respondent had fully set out the reasons why the appellant's application was rejected...the respondent had shown that the appellant's application was properly rejected." Mr Diwnycz, for the respondent, did not dispute the assertion that a concession had been made by the Presenting Officer before the First-tier Tribunal to the clear effect that the respondent was unable to adduce evidence (such as to discharge of the burden of proof upon her) that the application made by the appellant on 31 January 2008 had been validly rejected. The appellant, on the other hand, had established a *prima facie* case that the correct information had been submitted. It follows that the judge erred in law by going behind the concession made before him by the Presenting Officer and finding, contrary to that concession, that the application had not been properly submitted. In any event, the judge misapplied the burden of proof in respect of proving of that fact. In the light of those observations, I find that the First-tier Tribunal decision should be set aside.
4. As regards the remaking of the decision, Mr Markus submitted that the Tribunal was in a position to allow the appeal against the Secretary of State's decision outright (see grounds of appeal [34]). I agree. Mr Diwnycz, for the respondent, did not demur from Mr Markus's submission that the appeal should be allowed outright.

**Notice of Decision**

5. The decision of the First-tier Tribunal promulgated on 25 June 2015 is set aside. I have remade the decision. The appellant's appeal against the decision of the respondent dated 19 December 2014 is allowed under the Immigration Rules.
6. No anonymity direction is made.

Signed

Date 24 March 2016

Upper Tribunal Judge Clive Lane