



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

Appeal Number: IA/05566/2015

THE IMMIGRATION ACTS

**Heard at FIELD HOUSE
On 26th January 2016**

**Decision & Reasons Promulgated
On 29th January 2016**

Before

**DEPUTY UPPER TRIBUNAL JUDGE
G A BLACK**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR MD FARID AHMED

Claimant

Representation:

For the Appellant: Ms J Isherwood (Home office presenting officer)
For the Claimant: Mr M Hasan (Kalam solicitors)

DECISION AND REASONS

1. This matter comes before me for consideration as to whether or not there is a material error of law in the decision and reasons of the First Tier Tribunal (Judge T. Jones) (FtT) promulgated on 31st July 2015, in which the FtT allowed the appeal under the Immigration rules, to the extent that the matter was remitted to the Secretary of State for reconsideration.

Background

2. The Claimant made an application for leave under the Points based scheme, Tier 4 (general). The Secretary of State refused the application on the grounds that the Claimant failed to provide bank statements (with the application) that showed funds were available for the specified period of 28 days. At the hearing the Claimant produced the bank statements for the relevant period.

3. The FtT considered the position at the date of the application and found that the Claimant failed to meet the rules as to finance. However, the FtT went on to find that the Secretary of State ought to have allowed the additional bank statements under the evidential flexibility rule 245AA(b)(iv), and decided that the decision was not in accordance with the law.

Grounds of application for permission

4. The Secretary of State argued that the FtT erred in law by finding that the evidential flexibility rules were applicable.

Permission granted

5. Permission was granted on the grounds that the FtT misapplied Rule 245AA and failed to recognise that the absence of the financial evidence for the 28 day period was fatal to the appeal.

Submissions

6. Both representatives made submissions which are recorded in the Record of proceedings.

Discussion and conclusion

7. The main focus in this appeal is the applicability of paragraph 245AA of the Immigration rules, known as the evidential flexibility rule. I am satisfied that the FtT erred in misapplying that rule and considering that it was capable of rectifying an application that failed to meet the specified requirements for a Tier 4 application. The Claimant failed to provide evidence of his bank statements covering the specified 28 day period with his application for leave. Although he produced the further evidence at the date of hearing, the FtT could not take it into account pursuant to section 85A Nationality, Immigration & Asylum Act 2002. Paragraph 245 allows for evidence to be admitted where it, for example, forms part of a sequence that is missing, is in the wrong format, is a copy, and does not contain all of the specified information. I am satisfied that the Claimant failed to provide the requisite specified documents with his application and which was fatal to his application and which the Secretary of State correctly refused. The Secretary of State was under no duty under paragraph 245AA or otherwise to contact the Claimant seeking the specified documents that were missing. Whilst acknowledging that the bank statements failed to cover the period by a short time only, nevertheless the Rules were not met. The decision taken by the Secretary of State was entirely lawful.

Decision

8. There is a material error of law disclosed in the decision, which shall be set aside.

I remake the decision on the evidence that was before the FtT.

There is no need for any further hearing before this Tribunal.

The appeal is dismissed on Immigration grounds as the documentary evidence, in the form of the bank statements, did not meet the requirements of the rules as at the relevant time.

Signed

Date 29.1.2016

GA Black
Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER
NO FEE AWARD

Signed

Date 29.1.2016

GA Black
Deputy Judge of the Upper Tribunal