



IAC-AH-SAR-VI

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

Appeal Numbers: IA/21560/2014  
IA/22176/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14 October 2015**

**Decision & Reasons Promulgated  
On 13 January 2016**

**Before**

**UPPER TRIBUNAL JUDGE WARR**

**Between**

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

**Appellant**

**and**

**MISS NAUREEN TAJUDDIN  
MISS ANZAH ARWANI  
(ANONYMITY DIRECTION NOT MADE)**

**Respondents**

**Representation:**

For the Appellant: Ms A Everett

For the Respondents: In person

**DECISION AND REASONS**

1. This is the appeal of the Secretary of State but I will refer to the original appellants as the appellants herein. The first named appellant is a citizen of Pakistan born on 30 April 1983, and the second named appellant is her daughter who was born on 3 June 2009. A reference to the appellant is a reference to the first named appellant.

2. The appellant arrived in April 2007 as a Tier 4 Student Migrant. She applied on 12 April 2014 for leave as a Tier 4 (General) Student but this application was refused on 1 May 2014 on the following ground:
  - “(a) Miss Tajuddin failed to meet the requirements of paragraph 245ZX (d) because she was not awarded 10 points for Maintenance (Funds). This is because she was required to show that she was in possession of £3,603.16 for a consecutive 28 day period.
  - (b) She submitted her bank statements and the closing date was 1/04/2014 and therefore the 28 day period ran from 05/03/2014 to 01/04/2014. However on 07/03/2014 she only had £3,285.73 in her account and she has therefore not demonstrated she has the required funds available”.
3. The appellants appealed against the decision and their appeals came before a First-tier Judge on 12 January 2015 with the appellant appearing in person before him as she did before me.
4. The judge reached his conclusions in a commendably brief determination as follows:
  - “8. Miss Tajuddin relied on her bank statement ending 11<sup>th</sup> April 2014 which shows that she had sufficient funds in her account for in excess of a consecutive 28 day period from 10<sup>th</sup> March to 11<sup>th</sup> April 2014 which pre dates her application (dated 12<sup>th</sup> April 2014). The Appellant also relied on her notice of appeal which states she sent in an earlier bank statement in error and it is clear that she meets the requirements and should be awarded the 10 points for Maintenance (Funds).
  9. The Respondent relied on the Home Office bundle and the letter of refusal.
  10. I heard oral evidence from Miss Tajuddin and submissions from her and Mr Lumb.
  11. Miss Tajuddin conceded that she had not produced the correct bank statements with her application, but one ending on 1<sup>st</sup> April which did not have the correct amount in her account 28 days preceding the end date of the statement. However, she did have 28 consecutive days worth of accounts with the correct amount which pre-dated her application but had sent an earlier account in error.
  12. The Respondent’s case is that Miss Tajuddin did not provide the correct statements and therefore does not qualify for the points as set out in the reason for refusal letter.

### **Findings**

13. Miss Tajuddin made her application on 12/04/2014.
14. With her application Miss Tajuddin provided statements covering a 28 day period from 05/03/2014 to 01/04/2014. On 07/03/2014 the amount in her account fell to £3,285.73 and was therefore lower than the required amount of £3,603.16 which covers £2,000 living costs for herself, £1,200 living costs for her dependant, the second Appellant and £403.16 outstanding course fees.
15. With her appeal she submitted her later original bank statement which ended 11/04/2014, which pre-dates her application and they clearly show the required

amount in her account for a consecutive 32 day period prior to her application. The lowest figure is £3,610.89 on 31/03/2014 rising to £4,610.89 on 10/04/2014.

16. I find that Miss Tajuddin did have the required maintenance funds in her account for a consecutive 28 day period prior to her application on 12/04/2014. I therefore find that this constitutes an exceptional case as the case falls within 245AA and that Miss Tajuddin has established that she meets the maintenance requirements.
  17. Given that I have found that the application should be exceptionally granted and the specified documents are genuine and Miss Tajuddin meets all the other requirements, I did not need to go on to consider whether there is any evidential flexibility”.
5. The appeal was allowed. The Secretary of State applied for permission to appeal. The application for permission was refused by the First-tier Tribunal. However the application was renewed and on 23 May 2015 Upper Tribunal Judge Chalkley granted permission. Reliance was placed by the respondent on the case of **Han v Secretary of State [2014] EWHC 4606 (Admin)** and in particular paragraphs 12 to 15 of that decision which it is convenient to set out here:
- “12. In submissions on behalf of the claimant, Mr Mold advances two grounds. The first is the failure to apply paragraph 245AA. He contends that this was a case of a document that was in the wrong format, consequently the applicant should have been requested to submit it in the right format, in other words, a bank statement which would have finished its entries on 3 September such that the applicant could have demonstrated that she had the requisite £7,200 in the account. He quotes the decision of Simler J in R (on the application of Patel) v Secretary of State for the Home Department [2014] EWHC 1861 admin, that ‘format’ means the way something is arranged or set out. In Mr Mold’s submission the bank statement was in the wrong format in that it was dated 9 September. If it had been set out differently, the Immigration Rules would have been satisfied. The applicant could quite easily have obtained a further statement to satisfy the rules.
  13. In my view this argument goes nowhere. To my mind this is a document which was not in the wrong format. The fact is that it did not contain the correct information. It had to contain information demonstrating that the applicant had at the date of the statement, 9 September, that she had £7,200 in her account. Unfortunately she had paid the rent, as we now know, which reduced the balance below. But the fact is that giving paragraph 245AA its natural and ordinary meaning, and in circumstances where a rigid application of the immigration rules is necessary -- a point underlined by the Court of Appeal in Miah v Secretary of State for the Home Department [2012] EWCA Civ 261 -- this ground fails; see in addition R (on the application of Gu) v Secretary of State for the Home Department [2014] EWHC 1634 at paragraphs 23 and 24.
  14. Mr Mold’s second point is that the evidential flexibility policy should have been applied in this case. If applied the policy would have led to the Secretary of State requiring the claimant to request a bank statement which showed the balance available up to 3 September. Because the application was late, the requirement that the applicant have £7,200 was triggered. This was an otherwise compliant application -- the only gap being the full amount was not in the account on 9th

September. It was apparent, in Mr Mold's submission, that the missing document could be obtained.

15. In my view the evidential flexibility policy does not apply in this sort of situation. It is designed to address minor errors and omissions. The basic point is that there was no omission or minor error here. The fact is that the bank statement did not contain the requisite information".
6. Ms Everett submitted that the appellant had mistakenly not sent in the bank statement with her application. The First-tier Judge had erred in finding that paragraph 245AA applied. The omitted document was not one of a series and there was no issue with the formatting. There was nothing exceptional about the circumstances. The determination should be remade in the Secretary of State's favour.
7. The appellant submitted that she had the requisite funds which were present in the bank and the missing part formed part of a sequence.
8. Ms Everett submitted that the appellant could not benefit from her mistake under the Rules. The decision maker would not have been able to anticipate that a further document was to be produced. There was no error or omission in the documents submitted. On those documents the funds had gone below the required limit. The correct course would be to make a fresh application.
9. At the conclusion of the submissions I reserved my decision. However, it turned out that on the day of the hearing the Supreme Court had given its judgment in Mandalia v Secretary of State [2015] UKSC 59. I issued the following directions:
  - "1. On the day of the hearing the Supreme Court gave its judgment in the case of Mandalia v Secretary of State [2015] UKSC 59. Understandably neither party was in a position to make submissions in relation to that case. However, in the interests of fairness it is right that they should have the opportunity to do so as it raises matters of potential relevance to this appeal. In particular the Supreme Court overruled the decision of Gu v Secretary of State [2014] EWHC 1634 (Admin) which the Secretary of State relied on in her grounds of appeal.
  2. The parties have 14 days from the date this notice is sent out to make submissions about the effect if any of the case of Mandalia.  
After that time I will consider the disposal of the matter further in the light of any submissions received."
10. The appellant replied on 16 November 2015 relying on Mandalia and submitted that her circumstances were indistinguishable. Unfortunately there appears to have been no reply to the directions from the respondent.
11. It may well be the case that the respondent accepts that her appeal cannot be maintained in the light of the decision of the Supreme Court.
12. The appeal raises a very simple issue. The appellant had the requisite funds in her account but mistakenly put in documents before the respondent which did not show

that she complied with the relevant requirements of the Rules. With her appeal she submitted the bank statement, as the judge records, showing that she did comply with the Rules as at the date of the application. In this case the appellant relies on 245AA(b)(i) which reads as follows:

“Some of the documents in a sequence have been omitted (for example, if one bank statement from a series is missing) ...”

She refers to the letter from the Home Office acknowledging receipt of her application where it was said that “if there is any problem with the validity of the application, such as missing documentation or omissions on the form, a caseworker will write to you as soon as possible to advise you what action you need to take to rectify the problem.”

13. The respondent has apparently chosen not to make any further submissions in compliance with the directions I issued. The applicant submits her circumstances are the same in all material respects to those considered in Mandalia. In the apparent absence of any attempt by the respondent to respond to the directions I cannot find that there is any material error of law on the part of the First-tier Judge and I dismiss the respondent’s appeal and accordingly the decision of the First-tier Judge shall stand.

Decision:

Secretary of State’s appeal dismissed

**Anonymity Direction**

I make no anonymity direction

**Fee Award**

The judge made no fee award and I make none.

Signed

Date 16 December 2015

Upper Tribunal Judge Warr