



IAC-AH-RG-V1

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

Appeal Number: IA/05729/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 1 October 2014**

**Determination
Promulgated
On 27 October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

**JINIL PAROKKARAN POULOSE
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance by Legend Solicitors

For the Respondent: Mr S Kandola of the Specialist Appeals Team

DETERMINATION AND REASONS

The Appellant

1. The Appellant is a citizen of India born on 3 April 1983. On 27 August 2010 he arrived with leave to enter as a Tier 4 (General) migrant expiring on 28 June 2012. In time he applied for further leave in the same category.

The Decision and Grounds of Appeal

2. On 16 January 2014 the Respondent refused the Appellant's application and decided to remove him to India by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. The application was refused because the Appellant had failed to provide evidence of his relationship to his father who was his financial sponsor and by way of reference to paragraph 245ZX(d) of the Immigration Rules and paragraph 13 of Appendix C.
3. The Appellant's solicitors lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds assert that the evidence of Maintenance (Funds) submitted was a bank account in the joint names of the Appellant and his father and that the document evidencing the Appellant's birth had been sent at the Respondent's request. Further, there was no need for this latter document because the Appellant was a joint holder of the bank account.
4. Additional grounds of appeal refer to Article 8 of the European Convention, the Appellant's private life and his expenditure on his studies so far in the United Kingdom. Finally, the grounds submit the decision under Section 47 of the 2006 Act was unlawful by reason of the determination in *Ahmadi (s.47 decision: validity: Sapkota) [2012] UKUT 00147 (IAC)* but they fail to take into account Section 51 of the Crime and Courts Act 2013.

The First-tier Tribunal's Determination

5. The Appellant had requested an oral hearing. He did not attend and the Respondent had informed the Tribunal that the appeal could proceed without the Respondent being represented. A determination promulgated on 13 June 2014 Judge of the First-tier Tribunal Beach dismissed the appeal on all grounds. She addressed the issue of the bank statement and a subsequently submitted passbook at paragraphs 12 and 13 of her determination. The bank statement in question showed the holder was Mr Poulose, Po. There is reference to a nominee described as "Eliya". Subsequently, the Appellant filed with the Tribunal a copy of the Account Particulars from a bank passbook showing the Appellant as the first named joint-holder. The passbook showed it had been issued on 24 May 2013, some eleven months after the Appellant had made the application leading to the decision under appeal.
6. The Judge considered this was post-application evidence which she could not consider by reason of Sections 85A(3)(b) or 85A(4) of the 2002 Act. She concluded the Appellant did not meet the requirements of Immigration Rules.
7. She went on to consider the Appellant's claim that Article 8 of the European Convention was engaged. She noted his witness statement gave very little detail of his private life in the United Kingdom other than the assertion he had built up social ties and spent a lot of money on

tuition, fees and maintenance. No details of his studies were given or whether they had been completed or what effect removal to India would have on him. She concluded that while he may have established a private life the interference to it on removal would “be proportionate” and dismissed his appeal under the European Convention.

8. The Appellant through his solicitors sought permission to appeal which on 21 August 2014 was granted by Judge of the First-tier Tribunal PJM Hollingworth on the basis that it was an arguable error of law that the Judge had not taken account of the passbook.

The Upper Tribunal Hearing

9. The hearing was set for 1400 hours on Wednesday 1 October 2014 at Field House. By 1500 hours, there was no appearance by the Appellant or any representative for him. No message had been left at the reception desk in Field House and searches of the reception area did not disclose the Appellant or any representative.
10. I contacted the Appellant’s solicitors and spoke to a Mr Rohith. He told me he had sent a fax the previous day to the Upper Tribunal to state that his firm was withdrawing for lack of instructions from the Appellant. In the circumstances I was satisfied that notice of the time, date and place set for the hearing had been properly given to the Appellant and, having considered the documents in the Tribunal file, it was just to proceed. I asked for searches to be made for the fax which the solicitor said had been sent to the Tribunal. My clerk reported back that searches had not revealed that the Tribunal had received such a communication.
11. Mr Kandola submitted the Judge had been correct to consider the page of the passbook was not admissible. Additionally, the evidence which the Respondent had requested in the form of a birth certificate to confirm the relationship of the Appellant to his father had not been produced. The document which had been produced was a statement by the Appellant’s parents that they were the Appellant’s parents and the date of his birth. The statement showed that duty had been paid on the document and there were stamps by a notary as evidence of payment of stamp duty. The document was not a birth certificate but a statement by the Appellant’s parents. It did not meet the requirements of the Immigration Rules and the file showed that it had been obtained and submitted upon the Respondent’s request for a birth certificate in compliance with the requirements of paragraph 245ZX(d) and paragraph 13 of Appendix C of the Immigration Rules.
12. Mr Kandola continued that the bank account upon which the Appellant relied as evidence that he would be maintained was in his father’s sole name at the date of his application and by the date of the First-tier Tribunal hearing had become a joint account. The Appellant had failed to discharge the burden of proof to show that he met the requirements of the

Immigration Rules and the First-tier Tribunal's determination did not contain an error of law.

Findings

13. The Judge's treatment of the admissibility of the copy of a page from the bank account passbook was in accordance with Section 85A of the 2002 Act. Notwithstanding the assertions of paragraph 15 of the grounds for appeal that the Appellant had mentioned in his application the funds were in his own name it is evident that at the date of the application this was not correct and indeed on the documentation submitted continued to be an inaccurate statement until 25 May 2013, some eleven months after the date of the application. Consequently the exceptions referred to in Section 85A are not applicable and the Appellant has failed to show that there is an error of law in the First-tier Tribunal's determination which therefore shall stand.

Anonymity

14. There has been no request for an anonymity order and I see no reason for one.

DECISION

The First-tier Tribunal's determination did not contain an error of law and shall stand. The consequence is the Appellant's appeal is dismissed under the Immigration Rules and also on human rights grounds.

Signed/Official Crest

Date 23. x. 2014

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal