



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/05731/2014

THE IMMIGRATION ACTS

Given orally at Field House
On 5 September 2014

Determination Promulgated
On 3 October 2014

Before

UPPER TRIBUNAL JUDGE PETER LANE

Between

ZUBAIR KHAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Ahmad, Khans Solicitors

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Mr Zubair Khan, appeals with permission the decision of First-tier Tribunal Judge Monson, sitting at Taylor House on 20 May 2014 whereby, in a determination promulgated on 27 May 2014, he dismissed the appellant's appeal

against the decision of the respondent on 15 January 2014 to refuse to vary the appellant's leave to remain in the United Kingdom. Permission to appeal was granted by the First-tier Tribunal on 4 July 2014.

2. The essence of the matter is as follows. The appellant applied for variation of leave in 2012 and first received a decision from the Secretary of State in February 2013. The Secretary of State decided that the application fell to be refused under paragraph 245ZXD because the appellant had not shown that he had the level of funds required under Appendix C of the Rules. He needed to show evidence of £4,200 maintenance for 28 days from 6 November 2012 to 3 December 2012 but the statements ran only from 24 November 2012.
3. The appellant appealed against that decision and the appeal was listed for hearing on 6 October 2013. However the respondent notified the Tribunal and the appellant's representatives that the decision appealed against had been withdrawn. Then on 15 January 2014 the Secretary of State gave her reasons for re-refusing the application made on 18 December 2012. She found that it fell to be refused under paragraph 245ZXD of the Rules because the appellant had not shown that he had the level of funds required under paragraph C. He needed to show evidence of the maintenance figure previously mentioned for the period of 28 days from 6 November 2012 to 3 December 2012. As previously stated, the statements submitted in support of the application only run from 24 November 2012.
4. It was then said that the evidence subsequently provided by the appellant had been "considered against our evidential flexibility policy but the Home Office will only request further documents where such documents are known to exist but have not been submitted".
5. At the appeal hearing before Judge Monson the appellant gave oral evidence. He said that he had in fact provided two pages of a bank statement together comprising the requisite evidence over the relevant period.
6. At paragraph 21 of the determination, the judge said "By the time of the second refusal decision the situation had changed. The respondent now had the earlier bank statement in her possession. This together with the later statement demonstrated that the appellant met the maintenance requirement".
7. The judge found that he was not satisfied that the appellant had in fact submitted both pages of the bank statement at the requisite time, namely when the application was made. He did so, noting amongst other things that the application form referred only to the provision of a bank statement in the singular. There was also some acknowledgement by the appellant that this may have been the case, in that he insisted that even if he had not provided a first page, he believed he should have been given the opportunity to submit the missing bank statement.

8. The judge found as a fact that only one page had been submitted. Mr Ahmad on behalf of the appellant, relying on the grounds, contends that the judge gave legally insufficient reasons for that finding. I do not consider that to be the case. What I have just recited makes it plain that the judge gave a legally adequate reason and any challenge to that aspect of his determination is merely disagreement.
9. I turn to the substance of the matter, which is the application of paragraph 245AA of the Immigration Rules. In its form as it was at the date of the 2014 decision that paragraph provided that where specified documents had been submitted but some of the documents in the sequence had been omitted, for example if one bank statement from a series was missing, or a document was in the wrong format or a document is a copy and not an original document, or a document "does not contain all of the specified information" then the Secretary of State "may contact the applicant or his representative in writing and request the correct documents".
10. The judge considered that paragraph 245AA did not apply to the present case. Mr Ahmad criticises the findings of the judge in this regard which are to be found at paragraphs 19 and 20 of the determination. I agree that the reasoning, certainly in the second part of paragraph 20, appears somewhat obscure. The nub of the matter, however, seems to me to be that in the decision of 15 January 2014, the respondent said this "We have considered whether the evidence provided against our evidential flexibility policy. However we would only request further documents where such documents are known to exist but have not been submitted. As this is not the case evidential flexibility has not been applied."
11. That reason for not applying paragraph 245AA is in my view undoubtedly false. It is false because, as is now accepted on all sides, and indeed was accepted it seems at the date of the hearing before Judge Monson, the second page of the bank statement was with the Secretary of State by the time she took her decision in January 2014. The reasoning of the Secretary of State accordingly is deficient.
12. I would have found that the appellant would nevertheless have had difficulties in contending that paragraph 245AA applied, were it not for the fact that paragraph 245AA(b)(iv) refers to a document not containing all the specified information. In the circumstances, I am in agreement with Mr Ahmad that the single bank statement did not contain all the specified information and, given that the Secretary of State must by the date of decision have known that that was the case, and furthermore that there was evidence before her that plainly indicated that this was a failing that could be rectified by the appellant, in all those circumstances it was incumbent upon the Secretary of State to give consideration to paragraph 245AA of the Immigration Rules.
13. I therefore find that the determination of the judge contains an error of law. The judge's reasoning of paragraph 245AA is deficient. I therefore set aside his determination and re-make the decision by allowing the appellant's appeal against the decision to the extent that that decision is found by me not to be in accordance

with the law because a proper decision, applying paragraph 245AA, still requires to be made.

14. It is not for me to dictate or even to seek to influence how the Secretary of State may proceed. However, the Secretary of State may well feel in the circumstances that this is a case which, given the prolonged history and the fact that the appellant plainly can meet the requirements of the substantive Rules, may merit the grant of substantive leave to remain.

Appeal allowed.

Signed

Date

Upper Tribunal Judge Peter Lane