



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

Appeal Number: IA/12001/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2 December 2014**

**Determination  
Promulgated  
On 16 December 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

**Between**

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

Appellant

**and**

**MISS NASRIN AKTER  
(ANONYMITY ORDER NOT MADE)**

Claimant

**Representation:**

For the Appellant: Mr M Hassan (Solicitor)

For the Respondent: Mr Duffy, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against a determination by First-tier Tribunal (Judge Sweet), promulgated on 8 September 2014 in which the Claimant's appealed against a decision dated 20 February 2014 to remove her and to refuse leave to remain as a Tier 1 (Entrepreneur) Migrant.
2. The Claimant's date of birth is 1 January 1985 and she is a citizen of Bangladesh.

## **Background**

3. The Secretary of State considered the application under paragraph 245DD(d) and paragraph 245AA of the Immigration Rules which set out the specified documents required to be submitted in support of the application. The Rule provides for the exercise of evidential flexibility in certain circumstances including where,
  - (i) A sequence of documents or some of the documents in the sequence have been missing (for example if one bank statement from a series is missing).
4. The Secretary of State considered that the Claimant failed to produce bank statements to cover the required 90 consecutive day period ending no more than 31 days before the date of the application. The Secretary of State identified the period from 28 September to 23 December 2013.
5. The Tribunal found that the relevant 90 day period was from 23 September to 23 December 2013, and that the Claimant omitted the final Halifax bank statement issued on 23 December 2013. The Tribunal found that the Secretary of State ought to have used discretion under paragraph 245AA of the Immigration Rules. It was quite clear that the bank statements for the period showed the required funds up to 23 December 2013 needed to meet the Rules. The Tribunal found that the missing bank statement was a document in a sequence of documents that had been omitted. The bank statement was in existence and could have been obtained and it was in a sequence that directly followed on from the bank statements at Section F in the respondent's bundle.

## **Grounds of Application**

6. The Secretary of State argued that the judge failed to have regard to the decision of the Court of Appeal in the **Secretary of State for Home Department v Rodriguez [2014] EWCA Civ 2**. The Secretary of State asserted that the omitted statement was not one missing in a sequence and did not fall within the parameters of paragraph 254AA.

## **Permission**

7. Permission to appeal was granted by First-tier Tribunal Judge Ransley on 27 October 2014. The grounds having disclosed that a determination involved an arguable error of law.

## **The Hearing**

### **Submissions**

8. Mr Duffy conceded that having further considered the issues and the evidence that was before the Tribunal, it may be that the decision made

was open to the Tribunal. He conceded that the missing bank statement did come within the category envisaged in paragraph 245 as a document missing from a sequence of documents. He relied on **Chao Gu [2014] EWHC 1634 (Admin)**.

9. Mr Hassan submitted that the Claimant ordered from her bank the full range of bank statements for the relevant period and that the bank omitted to send the final bank statement for 23 December 2013. He submitted that **Rodriguez** was factually distinct from this case. The Claimant did have the funds available and the missing bank statement was put in evidence before the First-tier Tribunal.

### **Discussion and Decision**

10. Essentially there was agreement between the parties that the Claimant had indeed met the requirements of the Rules by producing evidence of her finances in bank statements covering a 90 day period. Mr Duffy sensibly conceded that the missing document was part of a sequence of documents, namely bank statements covering a period of time and as such came within the remit of paragraph 245AA.
11. The facts in **Chao Gu** related to documentation where a page in the middle of a document was missing. Because the missing page was in the middle it could be considered to be a document missing from a sequence. I am satisfied that the same principle clearly applies to a document at the end of a chronological series and which forms part of a sequence.
12. I am satisfied that the Tribunal correctly applied paragraph 245AA and concluded that the decision made by the Secretary of State was not in accordance with the law by her failure to apply paragraph 245AA(b)(i). I find no material error of law disclosed in the Tribunal's decision.

### **Decision**

13. **There is no material error of law in the decision.**
14. **The decision shall stand.**

No anonymity direction is made.

Signed

Date 15.12.2014

Deputy Upper Tribunal Judge G A Black

**TO THE RESPONDENT**  
**FEE AWARD**

No fee award made.

Signed

Date 15.12.2014

Deputy Upper Tribunal Judge G A Black