



IAC-AH-DN-V1

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

Appeal Number: IA/51152/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 17th December 2015**

**Decision & Reasons Promulgated
On 6th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**SHAKIL AHMAD
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Kalam of Kalam Solicitors
For the Respondent: Mrs S Sreeraman, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge S P J Buchanan of the First-tier Tribunal (the FtT) promulgated on 6th July 2015.
2. The Appellant is a male citizen of Bangladesh born 30th January 1989. He initially entered the United Kingdom on 6th January 2010 with leave as a Tier 4 Student. His leave was subsequently extended until 31st March 2014.

3. Prior to the expiry of his leave the Appellant applied for further leave to remain as a Tier 4 Student and his application was refused on 15th December 2014 under paragraph 245ZX(d) as the Appellant had not been awarded the 10 points claimed for maintenance. The reason for refusal was that the bank statement submitted by the Appellant in support of his application, could not be verified as genuine by the Respondent. No further reasoning for refusal was given.
4. The appeal was decided on the papers at the request of the Appellant. The Respondent did not request an oral hearing.
5. The findings of the FtT are contained in paragraph 6 of the decision which for ease of reference I set out below;
 - “6. In light of the contents of the Appellant’s letter received 12th March 2015, the Appellant does not persuade me that as at the date of the hearing he satisfies the Immigration Rules as regards maintenance or that the appeal ought to be allowed. In my judgment, there are no grounds for concluding that the Respondent ought to award points for maintenance when the Appellant states clearly and candidly that the bank account relied upon in his application, and in the appeal, has been closed, and that he has no money left in the account.”
6. The FtT therefore dismissed the appeal under the Immigration Rules.
7. The Appellant applied for permission to appeal to the Upper Tribunal. He was not legally represented and prepared the grounds himself. In summary he stated that he had provided proof that the funds were available for 30 days prior to the date of his application. The Appellant believed that the Immigration Rules stated that funds should be available for 30 days prior to the application. Therefore because the required funds were available, the Appellant considered that his appeal should have been allowed.
8. Permission to appeal was granted on the basis that the grounds were arguable.
9. Following the grant of permission to appeal the Respondent lodged a response dated 13th October 2015 pursuant to Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008, contending that the FtT directed itself appropriately, and the FtT was entitled to take into account that the Appellant claimed to have “closed” the disputed account.
10. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision should be set aside.

The Upper Tribunal Hearing

11. The Appellant was represented by Mr Kalam. He submitted that the FtT had erred by considering the date of hearing as being the relevant date, rather than the date of application. Mr Kalam submitted that the burden of proof was on the Secretary of State to prove that a document was not genuine.

12. Mrs Sreeraman relied upon the Rule 24 response and pointed out that the application had not been refused on the basis that the Appellant had used deception, but the Respondent's case was that the bank statements could not be relied upon as they could not be verified.
13. Mrs Sreeraman accepted that the FtT erred in paragraph 6 by making reference to the date of hearing but submitted that this was not a material error. Mrs Sreeraman referred to Appendix C paragraph 1A(c)(i) and (ii) and contended that the Appellant needed to prove that the funds would be available for his use in studying and living in the UK, and that the funds would remain available unless used to pay for course fees and living costs. Because the Appellant had stated in his letter which was received on 12th March 2015, that he had closed his bank account on 27th April 2014 because he needed the money for his maintenance in the UK, it was submitted that the Appellant could not satisfy the Immigration Rules in relation to maintenance. Therefore although the judge had erred, it was not a material error as the appeal could not have succeeded.
14. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

15. I find that the FtT materially erred in law for the following reasons.
16. The Respondent's decision simply stated that it had not been possible to verify the Appellant's bank statements, and gave no reason as to why verification had not been possible.
17. I find that the Respondent did not allege deception, and therefore the burden of proof is on the Appellant, on a balance of probabilities, to show that the documents he submitted could be relied upon.
18. The Appellant submitted an undated letter which was received on 12th March 2015 and which is referred to in paragraph 3 of the FtT decision. This is a letter that confirms that he closed his bank account on 27th April 2014. The Appellant attached to his letter, a letter from his bank dated 28th December 2014, confirming that the funds were available between 26th January 2014 and 26th April 2014. The purpose of this letter was to show that the earlier bank documents could be relied upon.
19. The FtT stated in paragraph 4 that the relevant date for "testing the position is as at date of hearing." This is incorrect. This error was repeated in paragraph 6. Appendix C paragraph 1A(a) states that an applicant must have the funds specified in the relevant part of Appendix C at the date of application.
20. Sub-section (c) confirms that in the case of a Tier 4 Migrant the funds must be held for a consecutive 28 day period of time, and sub-section (h) confirms that the end of the 28 day period will be taken as the date of the closing balance on the specified document submitted, and must be no earlier than 31 days before the date of application.

21. The FtT failed to assess whether the Appellant had the requisite funds in his account at the date of application, and whether those funds had been held for a consecutive 28 day period, and whether the correct specified documents had been submitted. The FtT, in my view, was wrong in law in paragraph 6 to state that the Appellant had not discharged the burden of proof as at the date of hearing.
22. I do not accept the argument made by Mrs Sreeraman that paragraph 1A(c)(i) and (ii) of Appendix C means that the error is immaterial. Those provisions specify that the funds should remain available unless used to pay for course fees and living costs. The Confirmation of Acceptance for Studies details confirms that the Appellant had paid his course fees for the first year in the sum of £2,500. There were no other fees to be paid. He was entitled to use the funds that had been in his account for his maintenance.
23. For the above reasons, the FtT erred in law by considering the circumstances at the date of hearing, rather than at the date of application. The decision is therefore set aside with no findings preserved.
24. The decision needs to be re-made. Having considered paragraph 7 of the Senior President's Practice Statements dated 25th September 2012, it is my view that the appeal should be remitted to the FtT to be heard afresh because of the nature and extent of the judicial fact-finding which is necessary.
25. The Appellant initially requested that his appeal before the FtT be decided on the papers. He has paid the appropriate fee for his appeal to be decided on the papers, and therefore this appeal will once again be decided by the FtT on the papers, unless the Appellant makes an application to the FtT to have an oral hearing, and pays the appropriate fee.
26. The appeal will be remitted to the Taylor House Hearing Centre to be considered by an FtT judge other than Judge Buchanan.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal.

Anonymity

An anonymity order was made in the First-tier Tribunal. It was not clear to me why such an order had been made. Mr Kalam confirmed that there was no application for anonymity, and the Upper Tribunal makes no anonymity order.

Signed

Date 17th December 2015

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

No fee award is made by the Upper Tribunal. The fee award will need to be considered again when the First-tier Tribunal has heard this appeal

Signed

Date 17th December 2015

Deputy Upper Tribunal Judge M A Hall