



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

Appeal Number: IA/28123/2012

THE IMMIGRATION ACTS

Heard at Field House

On 22 May 2013

**Determination
Promulgated
On 6 June 2013**

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Before

UPPER TRIBUNAL JUDGE KING TD

Between

DEWAN MUNTASIR CHOWDHURY

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Hosein, Legal Representative instructed by Diamond Solicitors

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a citizen of Bangladesh, born on 13 March 1989. He seeks to appeal against the decision of the respondent dated 22 November 2012 refusing him an extension of leave to remain as a Tier 4 (General) Student.

2. Issue was taken by the respondent as to the existence of the bank account which is claimed.
3. The appellant sought to appeal against the decision, which appeal came before First-tier Tribunal Judge Randall on 8 February 2013.
4. The respondent was not represented and no original documents were presented. What was presented was a copy of the relevant bank statement. The statement failed to show the dates upon which the entries were made and that was the subject of criticism from the Judge. The wording at the foot of the statement was the subject also of concern as set out in paragraph 15 of the determination. The appellant had produced several letters from the bank to confirm that indeed that was his account and that he had money in it. The Judge however concluded that reliance could not be placed upon the particular bank statement and therefore that the appellant had failed to discharge the onus upon him to show that he had the requisite funds for the requisite period.
5. Grounds of appeal were submitted in respect of the decision and leave to appeal was granted on the basis of the inadequacy of reasoning as to the falsity of the document. Thus the matter comes before me in pursuance of the grant of leave.
6. Mr Tarlow, who represents the respondent, agreed that the evidence before the Judge was unsatisfactory but invited me to find that the Judge did what he could in all the circumstances.
7. It seems to me that this is a case that is fundamentally tainted with unfairness.
8. The decision by the respondent contends that the bank statements from the Sonali Bank Limited were false "because Sonali Bank Limited have confirmed this in writing".
9. The document in writing is not within the file. What is produced seemingly for the first time in these proceedings, is a verification report essentially to the effect that the author of the report contacted the bank on 6 November 2012 on a particular bank number and the bank confirmed that the account did not exist.
10. Nowhere in the refusal decision is the existence of the verification report spoken about.
11. The nature of that report calls into question not so much the reliability of a statement but whether indeed that particular account exists.
12. Set beside that contention is first of all a letter from Sonali Bank Limited of 23 July 2012 certifying that the appellant does in fact maintain the account

and that the balance as of 23 July 2012 was 16.32.146/23 TK. That is reflected in the copy of the bank statement which has been produced.

13. There is a further letter from the bank again confirming that the appellant has such an account and there is an attested and stamped statement from the bank relating to 4 November 2012 to 2 January 2013.
14. Thus the real issue in this case, as between the respondent and the appellant, is whether or not there was such an account. Because the respondent did not attend the hearing that issue was not clearly identified and dealt with. The Judge has made no comment as to the genuine nature or otherwise of the letters that have been produced from the bank.
15. The nature of the particular bank statement is also unsatisfactory. Mr Tarlow does not have it within his file. He however produces a photocopy of the bank statement which is fuller than the one produced by the appellant to the Judge. The Judge was concerned about the dates of the transactions and it is clearly apparent from the respondent's copy that it relates from February 2012 to June 2012. Had that particular copy been produced then the issue that had worried the Judge about the dates would not have been relevant.
16. It is of course to be recognised that the writing on the statement is a matter which falls for consideration within the context of the contention made overall that no such bank account exists. That however was not as I said the matter that was addressed by the Judge, indeed it was not apparent as to the nature of the evidence from the reasons for refusal.
17. It seems to me for whatever reason that the full evidence that is relied upon has not been presented to the appellant in order for him to meet the concerns expressed and/or to obtain further evidence or clarification from the bank as to the contents thereof. It is significant that the bank in the various letters makes it clear that no request for verification was made to it and so it may be a relevant consideration in the context as to what telephone number 9330348 represents.
18. Justice is not only to be done but seen to be done and I consider that the central issue in this case was not grasped either by the appellant or by the Judge because of the paucity of documentation that had been provided by the respondent,
19. Accordingly I find that the decision is one tainted by such procedural unfairness that it should be set aside and re-made.
20. Given that the issue has not really been canvassed in the way in which it should have been I have regard to paragraph 7 of the Senior President's Practice Directions on remittal. I consider this is a matter that should be remitted back to the First-tier Tribunal to be argued properly and on the basis of all available documents.

Directions

1. The decision of Judge Randall shall be set aside.
2. The matter will be re-heard de novo in the First-tier Tribunal.
3. The respondent should exercise all reasonable diligence in obtaining the original statements submitted in support of the application.
4. Any further evidence that is to be relied upon should be served no later than five days prior to the hearing.

Signed

Date

Upper Tribunal Judge King TD