



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

Appeal Number: IA/11416/2013

THE IMMIGRATION ACTS

Heard at Field House

**Determination
Promulgated**

On 7 November 2013

On 4 December 2013

Before

DESIGNATED JUDGE MURRAY

Between

JAMAL MUHAMMAD EHSAN

No anonymity Direction has been made.

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Respondent: Ms Holmes, Home Office Presenting Officer

For the Appellant: Mr Rahman, Mayfair Solicitors, Hounslow

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan born on 18 August 1989. He appealed against the decision of the respondent dated 21 March 2013 refusing his application for leave to remain in the United Kingdom as Tier 4 (General) (Student) Migrant under the PBS. His appeal was heard by First-tier Tribunal Judge Prior on 3 September 2013. The appeal was dismissed and the determination promulgated on 9 September 2013.
2. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Macdonald on 1 October 2013. The grounds for application are that the judge wrongly refused to adjourn the hearing causing unfairness. The Home Office Presenting Officer produced, at the hearing, copies of emails between the British High Commission and MCB Bank which went to the issue of false documents being produced by the appellant. The appellant requested an

adjournment of 2 weeks to enable him to investigate these documents. This was not granted and the permission states that the issue of fairness may be an arguable error of law.

The Hearing

3. The appellant's representative submitted that these emails had not been seen by the appellant before the hearing. They were not in the respondent's bundle and so the appellant should have been granted an adjournment to enable him to make enquiries about these documents and hopefully rebut the accusation. The emails are dated 18 January 2013. The refusal letter is dated 21 March 2013. He submitted that these documents should have been in the respondent's bundle.
4. I was referred to the determination at paragraph 1 which deals with the adjournment request. It is stated therein that the appellant's father is in contact with MCB Bank and will seek from the bank evidence of the authenticity of the bank documentation.
5. I asked the representative how the appellant's father can obtain information about a bank account which is in his son's name. He said that the appellant's father has permission from the appellant to access his account. It was his father who put the money into the account. The representative submitted that before the hearing all the appellant had was the refusal letter which refers to false bank documents but if he had seen these emails he could have made proper enquiries at the Bank. He submitted that the judge used the wrong test and made his decision based on a presumption. I was referred to the case of SH Afghanistan [2011] EWCA Civ 1284. He submitted that because the appellant had not seen the emails, the judge's decision is unfair as the appellant had been unable to rebut this accusation as he had no details of the person who had dealt with the matter at MCB Bank. He submitted that there is a material error of law in the determination.
6. I asked the representative if he accepts that there is a verification report in the respondent's bundle and that this was before the First-tier Tribunal Judge. He checked his file and accepted this. I asked him if this perhaps defeats his argument. He said that the verification report does not state the content of the emails and his instructions are that when the emails were shown to the appellant, the judge only gave him a short period to consider them, but during this period, he had spoken to his father who said that he would look into this. The representative was unable to tell me why the appellant had not gone to the bank with the verification report to try to produce documentation to rebut the accusation.
7. The Presenting Officer submitted as there is a verification report the appellant had been made aware of the false documents. At the hearing the appellant said that he did not know whether the bank documents were genuine or not but thought that they were. He provided no assurance from MCB Bank rebutting the verification report. The Presenting Officer submitted that the judge was entitled to come to the conclusion he did.

The verification report and the refusal letter make clear what the problem is with the application so surely the appellant could have got a letter from the bank or his father could have given a statement. She submitted that the appellant had known what the problem was and had produced nothing. She submitted that it was open to the judge to refuse the adjournment and that the decision is not unfair. The appellant had months to get documentation to rebut the accusation. The appellant asked for the case to be dealt with on the papers. He therefore had had an opportunity to give evidence but he did not take this and he has not appeared for this hearing. His representative informed me that the appellant had telephoned him that morning to say he was not coming because of health issues. The Presenting Officer submitted that his non-appearance is significant.

8. I was referred to paragraph 9 of the determination which gives details of the bank account with MCB Bank and states that the appellant must have been aware that he had to deal with this matter if his appeal was to succeed. The Presenting Officer submitted that there is no unfairness.
9. The appellant's representative submitted that there was nothing the appellant could have added before the First-tier Tribunal but he might now be able to produce documents and an explanation if I find there to be an error of law in the First-tier decision.

Determination

10. I have considered what was before the judge at the First-tier hearing on 3 September 2013. The appellant knew from the date of the refusal of 21 March 2013 that his application had been denied because he appeared to have submitted false MCB Bank documents. During that period he did not obtain a letter of rebuttal from the bank and although he turned up for the First-tier hearing he instructed his representative to ask the judge to determine the appeal on the papers.
11. It is clear that the verification report was before the judge and that the appellant had seen this. The emails produced at the First-tier hearing added nothing. The Presenting Officer is correct to say that nothing was produced at the First-tier hearing to rebut the accusation. There is still nothing before the Tribunal.
12. The judge gave the appellant a short time to consider the emails. That was sufficient. The appellant had an opportunity to give evidence at the hearing but did not do so. Because of the terms of the refusal letter and the verification report the judge did not make an error in refusing to adjourn the hearing for 2 weeks to enable the appellant to consider the emails.

DECISION

13. There is no error of law in the judge's determination. The First-tier Tribunal's decision dismissing the appellant's appeal must stand.

14. No anonymity direction has been made.

Signed

Date

Designated Judge Murray
Judge of the Upper Tribunal