



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/12922/2014

**THE IMMIGRATION ACTS**

Heard at North Shields  
On 22 August 2014  
Given extemporary in the hearing.

Determination Promulgated  
On 28 August 2014

Before

**UPPER TRIBUNAL JUDGE RICHARD CHALKLEY**

Between

**MR SYED ADIL BOKHARI**

Appellant

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss A Hashmi, Ashwood Solicitors

For the Respondent: Mr C Dewison, Senior Home Office Presenting Office

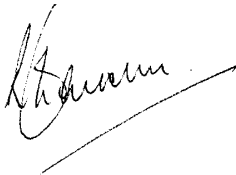
**DETERMINATION AND REASONS**

1. The Appellant is a citizen of Pakistan who was born on the 21 April 1986, and who arrived in the United Kingdom on the 12 September 2010, with entry clearance conferring leave to enter valid until the 30 November 2012, as a Tier 4 student. On the 11 January 2012, he was granted leave to remain until the 11 January 2014, as a Tier 1 Post Study Migrant. On the 10 January 2014, he applied for leave to remain in the United Kingdom as a Tier 1 Entrepreneur, but his application was refused by the Respondent on the 27 February 2014. At the same time the Secretary of State made the decision to remove the Appellant from the United Kingdom by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006 as amended.

2. The Appellant, dissatisfied with that decision, appealed to the First-tier Tribunal and his appeal was heard at North Shields on the 14 May 2014, by First-tier Tribunal Judge Fisher. The judge noted that the Appellant had claimed 75 points under Appendix A for Attributes and had produced two bank statements, one from BankIslami and one from Lloyds PLC in support of his application. No points were awarded to him under Appendix A, because the Respondent asserted that on the evidence provided there was no one day in common between the two bank statements when the balances in aggregate amounted to the required £50,000.
3. The judge noted that in a bundle provided for the hearing there was a further BankIslami bank statement for some point at the beginning of December 2013 (the date is not clear on the copy) expiring on the 1 January 2014, that showed that the balance in that account as at the 31 December 2013 exceeded the balance in the account that was before the Respondent, and that, taken with the £10,000 balance which was in the Lloyds PLC bank account as at the 31 December 2013, met the requirements of the rules. As the judge pointed out, he is not able to take account of the BankIslami statement in the bundle, because the statement was not submitted with the application. The judge concluded that the Appellant had failed to submit evidence with his application which showed that there was a single point in time when the aggregate balance in the two bank accounts amounted to the required £50,000. He repeated the assertion that it was not possible for him to consider page 14 of the bundle since this was post-application evidence and none of the exceptions to Section 85A were shown to apply.
4. It was submitted on behalf of the Appellant at the appeal hearing before Judge Fisher, that the Secretary of State should have exercised her flexibility policy in respect of evidence. The judge dismissed that assertion and pointed out that Paragraph 245AA did not apply, because this was not a case where a sequence of documents had been submitted and one or more was missing. He pointed out that the Court of Appeal in *Rodriguez (Flexibility Policy)* [2013] UKUT 00042 (IAC) held that there was no requirement on the Respondent in every case to make enquiries or to enquire whether further funds are available.
5. The grounds of appeal to the Upper Tribunal are lengthy, but contain only one challenge and assert that the judge ignored the principle of evidential flexibility. At paragraph 5 of the grounds there is a claim that the precise procedure to be followed by caseworkers is very detailed and it applies where:
  - “1. There is missing evidence,
  2. The application would not fail to be refused even if the missing evidence were to be provided,
  3. It is established that the evidence exists or there is sufficient reason to believe that the evidence exists,
  4. The caseworker must contact the applicant/rep/sponsor by telephone for the evidence. No more than two attempts to contact by telephone. If there is a rep they must be contacted. Email contact should follow the telephone call. If the telephone call cannot be made a letter should be sent,
  5. A time frame of seven days is given for the response to the request in cases to be left open for seven days.”
6. I asked Ms Hashmi if she could tell me where those specific instructions come from. She agreed that they did not reflect the Secretary of State for the Home Department’s Evidential Flexibility Policy. Addressing me on the grounds, she told me that the judge had failed to take account of the Evidential Flexibility Policy, because the Appellant did send evidence to show

that there was £50,000 available in two separate accounts. She agreed that one account period had expired before the other account period started. She referred me to page 14 of her bundle, but accepted that this was post-decision evidence and could not be taken into account.

7. For the Respondent, Mr Dewison submitted that there was no merit in the ground and that the judge had properly considered all the evidence and looked at the requirements of the rules. His analysis of the evidence shows no error and this was not a situation covered by the Evidential Flexibility Policy. The judge demonstrates at paragraph 14 that he considered this and also Paragraph 245AA, he submitted that there was no error and that the appeal should be upheld.
8. I have concluded that the determination of First-tier Tribunal Judge Fisher does not contain any error on a point of law. The Appellant was required to show that on a common date there was available the sum of at least £50,000 in his bank or bank accounts. What transpired here is that two statements were submitted covering different periods so that it was not possible to know how much money the Appellant had in aggregate on the dates in the gap between the two bank statements. The Appellant simply failed to satisfy the requirements of the rule and for that reason I uphold the determination of Judge Fisher which shall stand.



**Signed**  
**Upper Tribunal Judge Chalkley**