



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

Appeal Number: IA/15324/2014

THE IMMIGRATION ACTS

Heard at Field House

On 6 August 2014

Determination

Promulgated

On 19 August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

MR RAJU BANDI

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms D Qureshi, Counsel instructed by Bright Star Solicitors

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India and his date of birth is 2 May 1988. He made an application on 19 December 2013 to vary his leave to remain as a Tier 1 (Entrepreneur) Migrant under the points-based system. His application was refused by the respondent in a decision of 21 March 2014. The application was refused because the decision-maker decided that the bank statements submitted by the appellant from Federal Bank Limited

India and the Punjab Bank are false because the respective banks had confirmed that they had not been issued by them.

2. The appellant was not awarded points for attributes under Appendix A and C. The application was refused under the substantive Rules and in addition under 322(1A) of the Rules.
3. The appellant appealed against the decision of the Secretary of State and his appeal was dismissed by Judge of the First-tier Tribunal J S Law in a decision that was promulgated on 30 May 2015. This must be a typographical error and should read 2014. The matter was determined by the Judge on the papers. The appellant had requested a hearing.
4. The Judge went on to dismiss the appeal without a hearing pursuant to Rule 15(2) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. He also found that The Judge found that there was no valid appeal for the following reasons:

- “2. Rule 15(2)(c) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 provides that the Tribunal may determine an appeal without a hearing if:

‘A party has failed to comply with a provision of these Rules or a direction of the Tribunal and the Tribunal is satisfied that in all circumstances, including the extent of the failure and any reasons for it, it is appropriate to determine the appeal without a hearing.’

3. The Appellant’s failure to supply the Notice of decision against which he is appealing is a failure to comply with Rule 8(2) of the 2005 Procedure Rules as amended by the Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2008 which came into force on 12th May 2008.
4. Bearing in mind that the burden of proof is on the Appellant and the standard of proof is on the balance of probabilities it is clear that the Appellant has provided no basis for determining an appeal in his favour in the absence of the decision to which his appeal relates. The decision is indicated to be an application for entry on a non-settlement basis. The grounds reveal this to be a student application. I have therefore considered whether it is appropriate to exercise the Tribunal’s discretion to determine the appeal and to dismiss it for want of the Notice of decision and the likely consequences. As the Appellant would be at liberty to apply for entry clearance afresh there are no consequences which would apparently serve to indicate it would be unjust to do so.”

5. The appellant was granted permission to appeal by Judge of the First-tier Tribunal levins in a decision of 20 June 2014. The grounds seeking leave to appeal argue that the grounds of appeal and the decision were forwarded to the Tribunal on 8 April 2014. The Secretary of State served a response pursuant to Rule 24 of the 2008 Procedure Rules which it is accepted that the Judge did not appear to have understood the immigration decision. However, it is possible that the error is immaterial because the appellant has failed to comply with 8(2) of the 2005 Procedure Rules.

Conclusions

6. The Judge on the one hand dismissed the appeal whilst on the other purported to find that there was no valid appeal. The appellant was sent a notice by the First-tier Tribunal on 29 April 2014 requesting grounds of appeal by 7 May 2014. The appellant sent grounds of appeal and 1 copy of the decision under appeal to the Tribunal in correspondence of 8 April 2014. I also note that there was a second decision letter which is stamped 2 April 2014, presumably by the First-tier Tribunal.
7. Mr Tufan conceded that in the light of the procedural irregularity there was a material error of law and I agree with him. It is a real possibility that the Judge dismissed the appeal without considering the documents that were on the file. In addition the Judge wrongly identified the decision under appeal.
8. The procedural irregularity amounts to a material error and I set aside the decision to dismiss the appeal under Section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and remit the matter to the First-tier Tribunal pursuant to Section 12(2)(b)(i) with regard to paragraph 7.2(a) of the practice statement of 25 September 2012. The appellant has requested a hearing.
9. Mr Tufan served and filed two document verification reports on which the respondent seeks to rely.

Signed Joanna McWilliam

Date 18 August 2014

Deputy Upper Tribunal Judge McWilliam