



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

Appeal Numbers: IA/26664/2014  
IA/26671/2014  
IA/26682/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 5 December 2014  
Oral judgment**

**Determination  
Promulgated**

**On 9 December 2014**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**PRAVINKUMAR SURSINH PARMAR  
KRISH PRAVINBHAI PARMAR  
RANJNABAHEN PARMAR  
(Anonymity direction not made)**

Respondents

**Representation:**

For the Appellant: Miss J Isherwood, Home Office Presenting Officer  
For the Respondents: First Appellant in person.

**DETERMINATION AND REASONS**

1. This is an appeal by the Secretary of State against a determination of First-tier Tribunal Judge Cheales, promulgated on 2 October 2014 following

a hearing in Birmingham on 23 September 2014, in which she allowed the appellant's appeal against the refusal of the Secretary of State to vary his leave to permit him to remain in the United Kingdom as a Tier 4 (General) Student and other family members in line and against a direction to remove the appellant from the United Kingdom made under Section 47 of the Immigration and Asylum Act 2006.

2. The applications for Tier 4 Student status, both in respect of Mr Parmar as the primary applicant and other family members as dependants in line was refused by the Secretary of State for reasons set out in the respective refusal notices dated 10 June 2014. In respect to Mr Parmar it was said he had submitted a bank statement for an account in the name of another party but the decision maker did not accept that document as evidence of available funds because it was said he had not provided evidence of his relationship to the person named on the bank statement as the holder of the account. Mr Parmar's case has always been as set out in his grounds of appeal, that that is his father and that he has established the relationship.
3. Judge Cheales having considered the documents allowed the appeal, stating in paragraph 9 of her determination

“The issues in this refusal are narrow. From the refusal notice it does not seem to be disputed that the required money is in the account of Surinh Ratansinh Parmar. The refusal is because the appellant has submitted a bank statement in the name of that individual but has not said what relationship this has to him. I have now received, albeit in photocopies, evidence that Mr Parmar is the appellant's father.”

The judge allowed the appeal on that basis.

4. The Secretary of State challenged that conclusion by reference to Section 85A of the 2002 Act which prohibits judges taking into account evidence not before the decision maker where it relates to acquisition of points in a points-based appeal and particularly prohibits consideration by a judge of evidence adduced after the decision has been made in these circumstances.
5. I am grateful to both Miss Isherwood and Mr Parmar today. He has referred the Tribunal to a document he describes as a declaration signed by his father confirming that the appellant before us is his son. Miss Isherwood has referred me to page 13 of the application form where the appellant, in relation to a question concerning evidence of funds held by the appellant's parents or legal guardian and the need for evidence that those funds are available to him for which a document must be submitted such as a letter from the parents or legal guardian, has answered “yes”.
6. Miss Isherwood is clearly in some difficulty today. She has gone through her file as best she can but it appears from the weight of evidence that the

statement by Mr Parmar that the declaration is a document submitted with the application is one this Tribunal has to accept. Miss Isherwood has not stated she has anything before her indicating that it was not included with the application. The judge has not helped the cause by failing to identify exactly the nature of that document and what she means by the term “I have now received” in light of the fact it could have been provided with the appeal form, it could have been with the respondent's bundle, or sent in later, we just do not know.

7. The test in this case, on the balance of probabilities, is whether the Secretary of State has established that the judge has erred in law. It has to be my finding in these circumstances that she has not. My decision is that no legal error has been proved material to the decision to allow the appeal. The determination shall stand.

### **Decision**

- 8. There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

1. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date

Upper Tribunal Judge Hanson