Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/28935/2013**

THE IMMIGRATION ACTS

Heard at Field House, London	**Determination Promulgated**
On 24 September 2014	**On 10 November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MUHAMMAD HASSAN MAHMOOD

Respondent

Representation:
For the Appellant: Ms A Everett, Home Office Presenting Officer
For the Respondent: Mr Z Ali, Denning Solicitors

DETERMINATION AND REASONS

1. Whilst this is an appeal by the Secretary of State for the Home Department, for convenience I will refer to the parties in the determination as they appeared before the First-tier Tribunal

2. The appellant, a national of Pakistan, appealed to the First-tier Tribunal against the decision of the Secretary of State to refuse his application for leave to remain as a Tier 4 (General) Student Migrant under the Points Based System and to remove him from the UK. First-tier Tribunal Judge Oakley allowed the appeal and the Secretary of State now appeals with permission to this Tribunal.

3. The appellant was granted leave to enter the UK as a Tier 4 General Student on 21 August 2010 and was granted further leave to remain in the same category until 29 October 2012. The appellant claims to be in receipt of financial support from his mother and submitted a bank statement in the name of Shamsad Akhtar. However the respondent did not award the appellant the 10 points claimed in his application for maintenance because the appellant had failed to provide the evidence specified in paragraph 13B (a) of Appendix C of the Immigration Rules to establish his relationship with the account holder for the purposes of financial sponsorship under Tier 4. The appellant submitted a Family Registration Certificate but the Immigration Rules specify that a relationship can only be established using an original birth certificate, certificate of adoption or Court document naming a legal guardian.

4. The First-tier Tribunal Judge accepted that the appellant had always been financially supported by his mother in connection with his application to enter and previous application to remain in the UK and that he had on those previous occasions used the Family Registration Certificate as evidence of his birth and relationship. The Judge accepted that the appellant had completed this application himself and that as the Family Registration Certificate had previously been accepted he assumed that it would be satisfactory on this occasion. The Judge accepted that the appellant has completed his ACCA and a postgraduate diploma in management in the UK and that he was in the process of completing his MBA when he made this application. The Judge accepted that the appellant has since completed the MBA and now intends to study for a PhD in finance and would prefer to undertake this course in the UK. The letter from Habib Bank submitted with the application said that the customer, Shamshad Akhtar, has availed of a loan to meet the further studies of her son, Muhammad Hassan Mahmood.

5. The appellant produced a birth certificate at the appeal hearing in the First-tier Tribunal but the Judge said that he was precluded from taking it into account as it was submitted after the date of the decision.

6. The Judge decided that the appellant had submitted a Family Registration Certificate which had previously been accepted and was a document in the wrong format. He decided that the Secretary of State could have requested the submission of further documents to clarify the Family Registration Certificate. The Judge also decided that the letter from Habib Bank clearly shows that the money is available for the appellant's studies. The Judge allowed the appeal.

Error of Law

7. Mr Ali accepted that the provisions of the Immigration Rules considered by the Secretary of State and the Judge are the appropriate provisions applicable in this case.

8. The grounds of appeal submitted by the Secretary of State contend that the Judge erred by taking into account evidence which was inadmissible under section 85A of the Nationality, Immigration and Asylum Act 2002 by

allowing the appeal on the basis that the Secretary of State did not request the birth certificate.

9. Mr Ali submitted that the Judge could take the birth certificate into account under section 85A (4) (c) in order to demonstrate that the Family Registration Certificate is genuine. I do not accept this submission. Firstly the Judge did not say that he was so doing. Secondly, the birth certificate was a required document and was not produced to prove that the Family Registration Certificate is genuine but to try to meet the requirements of the Immigration Rules. In deciding that he was satisfied that the appellant and the account holder were related as claimed as required by the Rules the Judge must have indirectly taken the birth certificate into account despite being precluded from doing so.

10. Mr Ali submitted that the appellant relied on the Family Registration Certificate in his previous applications. I asked him if the same provisions of the Immigration Rules applied to those applications and he said that whilst he had no information about the Immigration Rules which applied to those applications he understood that they were likely to have been the same. This is not sufficient evidence to demonstrate that the evidential requirements for the previous applications were the same as those for this one. In any event Ms Everett submitted that each application is dealt with individually under the Immigration Rules. Mr Ali submitted that the previous grants created a legitimate expectation that the Secretary of State should have accepted the Family Registration Certificate again or have written to the appellant to ask for his birth certificate. However, as the recent Upper Tribunal decision in Mehmood (legitimate expectation) [2014] UKUT 00469 (IAC) confirms; "*The first question in every case concerning an alleged legitimate expectation is whether the public authority concerned made an unambiguous representation, promise or assurance devoid of any relevant qualification".* There was no such unambiguous representation, promise or assurance in this case. There was therefore no legitimate expectation created by the fact that the appellant had not produced his birth certificate in his previous applications.

11. The Judge referred at paragraph 19 to the 'recent policy rules'. I assume he was referring to paragraph 245AA of the Rules. The grounds of appeal contend that the Judge misapplied this provision in deciding that the respondent could have easily requested the birth certificate. It is contended by the respondent that paragraph 245AA did not apply in this case. Ms Everett submitted that, if paragraph 245AA had applied, the Judge should have referred the case back to the Secretary of State and not decided it himself.

12. Paragraph 245AA of the Immigration Rules provides that the Secretary of State may contact an applicant to request the correct documents where the applicant has submitted documents in which;
    "(i) Some of the documents in a sequence have been omitted (for example, if one bank statement from a series is missing);
    (ii) A document is in the wrong format (for example, if a letter is not on letterhead paper as specified); or
    (iii) A document is a copy and not an original document; or

(iv) A document does not contain all of the specified information".

13. Mr Ali submitted that the birth certificate in this case comes within (ii) above. However I do not agree that this applies. In this case the appellant failed to submit the required document, a birth certificate, the Family Registration Certificate is not another format for a birth certificate. Paragraph 245AA did not apply in the circumstances of this application.

14. In light of the above I am satisfied that the Judge was precluded by section 85A from taking the birth certificate into account as the appellant had not supplied it with the application. Paragraph 245AA did not apply in the circumstances and the Secretary of State was not therefore obliged to consider contacting the appellant to seek the correct documentation. The Judge therefore erred in allowing the appeal despite the fact that the appellant has not submitted the required documentation.

15. I therefore set aside the Judge's decision. I remake it by dismissing it because the appellant did not provide the specified documentation with his application as required by the Immigration Rules.

Conclusion:

The making of the decision of the First-tier Tribunal did involve the making of an error on point of law.

I set aside the decision.

I re-make the decision in the appeal by dismissing it.

Signed Date: 7 November 2014

A Grimes
Deputy Judge of the Upper Tribunal