**14 October 2015**

**PRESS SUMMARY**

**Mandalia (Appellant) v Secretary of State for the Home Department (Respondent) [2015] UKSC 59**
***On appeal from [2014] EWCA Civ 2***

**JUSTICES**: Lady Hale (Deputy President), Lord Clarke, Lord Wilson, Lord Reed and Lord Hughes

## BACKGROUND TO THE APPEAL

Mr Mandalia came to the UK from India in 2008 to study. His visa was due to expire on 9 February 2012 and on 7 February 2012 he applied to the UK Border Agency ("the Agency") for a visa extension in order to study accountancy [**1**]. To secure an extension, Mr Mandalia needed to satisfy certain requirements for student visas under the points-based system set out in the Immigration Rules. In particular, he needed to demonstrate, by the provision of certain documents (including bank statements), that he had held at least £5,400 for a consecutive period of 28 days ending no earlier than one month prior to the date of his application ("the 28-day requirement") [**2-7**].

In his application form, Mr Mandalia confirmed that he held at least £5,400 and submitted a bank statement covering the period from 29 December 2011 to 19 January 2012. The statement was numbered "64" and showed an opening credit balance of £11,090.60, a closing credit balance of £12,071.05, and a lowest intervening balance of £11,018.34. However, as the statement covered a consecutive period of only 22 days, it did not satisfy the 28-day requirement [**8-9**]. Following an acknowledgment of receipt, Mr Mandalia did not hear from the Agency again until a letter dated 21 April 2012 informing him that his extension application had been refused because of the failure to satisfy the 28-day requirement and that a decision had been made for his removal from the UK [**10-11**].

Mr Mandalia's appeal to the First-tier Tribunal (Immigration and Asylum Chamber) was dismissed [**13-15**]. In the course of those proceedings, the Tribunal was not referred to the Agency's instructions to its caseworkers on handling visa applications ("the Process Instruction"), which provided a degree of flexibility where an applicant had failed to provide information or evidence. On appeal to the Upper Tribunal, Mr Mandalia successfully challenged the decision to remove him. However, owing to some confusion over his grounds of appeal, the Upper Tribunal did not consider his challenge to the First-tier Tribunal's decision regarding the refusal of his visa extension application by reference to the Process Instruction [**16-17**]. Although the Court of Appeal accepted that it had jurisdiction to determine the issue, it dismissed Mr Mandalia's appeal [**18-20**].

The question before the Supreme Court was whether the Agency had acted unlawfully in refusing the visa extension application without first inviting Mr Mandalia to supply a further bank statement(s) in accordance with the guidance set out in the Process Instruction [**1**].

## JUDGMENT

The Supreme Court unanimously allows Mr Mandalia's appeal and quashes the refusal of his visa extension application. Lord Wilson (with whom Lady Hale, Lord Clarke, Lord Reed and Lord Hughes agree) delivers the only judgment.

## REASONS FOR THE JUDGMENT

The Court of Appeal did not have the benefit of the analysis of the Process Instruction by either of the specialist immigration tribunals. It was unfortunate that no reference had been made to the Process Instruction before the First-tier Tribunal. Mr Mandalia could not be expected to have been aware of it, and the Home Office Presenting Officer clearly failed to discharge his duty to draw it to the Tribunal's attention as policy of the Agency which was at least arguably relevant to Mr Mandalia's appeal [**19**].

*Legal effect of the Process Instruction*

The exercise of statutory powers can be restricted by government policy. An applicant's right to the determination of an application in accordance with government policy is now generally taken to flow from a principle related to the doctrine of legitimate expectation, but freestanding from it. Individuals have a basic public law right to have their cases considered under whatever policy the executive sees fit to adopt, provided that the policy is a lawful exercise of the discretion conferred by statute. The Process Instruction was a lawful exercise of the power conferred on the Secretary of State under s.4(1) of the Immigration Act 1971. It was also accepted that there was ample flexibility to prevent the Process Instruction from being a fetter on the discretion of caseworkers, and that there were no good reasons for not following the Process Instruction in this case. The only issue is as to the correct interpretation of the Process Instruction, which is a question of law for the Court [**29-31**].

*Interpretation of the Process Instruction*

The Process Instruction provided that caseworkers should show some limited flexibility in relation to applications from which requisite information or evidence had been omitted [**21-22**]. In particular, the Process Instruction set out several steps which should be followed when there is missing evidence [**23**]:

- Step three provided that, where there was evidence missing from an application which might affect its outcome, further information could be requested from the applicant where either it was "established that evidence exists, or [there was] sufficient reason to believe the information exists". One of the examples given in the Process Instruction of where this might apply was where there were "bank statements missing from a series" [**24**-**26**].

- Step four provided that "[w]here there is uncertainty as to whether evidence exists, benefit should be given to the applicant and the evidence should be requested" [**27**].

It was clear that Mr Mandalia's bank statements numbered 62-64 formed a series, and it would be obvious to a caseworker looking at a statement numbered 64 that it formed the last in a series, and that the statement(s) covering the preceding six days were missing from that series (*R (Gu) v Secretary of State for the Home Department* overruled) [**32-33**, **37**]. Caseworkers were not required to split hairs in construing the Process Instruction, as it stressed the need for flexibility. In particular (a) there was no limit on the amount of information that could be requested from an applicant, (b) bank statements "missing from a series" were only one example of further evidence which should be requested, and (c) where there was uncertainty as to whether evidence existed, the applicant should be given the benefit of the doubt [**34**]. Conferred with that degree of flexibility, a caseworker should have followed the Process Instruction by requesting Mr Mandalia to provide the statement(s) which covered the first six days of the 28-day period. The Agency's refusal of Mr Mandalia's application was therefore unlawful [**35-36**].

*References in square brackets are to paragraphs in the judgment*