



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

CS (Tier 1 – home regulator) USA [2010] UKUT 163 (IAC)

**THE IMMIGRATION ACTS**

**Heard at George House, Edinburgh**

**Determination Promulgated**

**On 30 April 2010**

.....

**Before**

**Mr Justice Blake, President**

**Mr C M G Ockelton, Vice President**

**Between**

**CS**

**Appellant**

**and**

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

**Respondent**

**Representation :**

For the Appellant: Mr Duharic of Morton Fraser, Solicitors.

For the Respondent: Mr Laverty, Senior Home Office Presenting Officer

The reference to home regulator in paragraph 96(iv) of the Tier 1 Guidance with respect to overseas financial institutions refers to the need for the institution to be regulated and not to the identity of the institution that provides the information about the account. MM (Tier 1PSW; Art 8; “private life”) Zimbabwe [2009] UKAIT 00037 at [12] corrected on this point.

**DETERMINATION AND REASONS**

1.

The appellant is a national of the USA who in August 2007 had been granted leave to enter the United Kingdom as a student. On 30 July 2009 she applied for leave to remain as a Tier 1 Post Study Migrant. The respondent refused the application on 26 August 2009. There was an appeal to the IJ that was originally heard on 8 October 2009 and adjourned over to 17 November 2009. By 8 October the evidence presented as to her MA in animation awarded by the Edinburgh College of Art made it clear that the only issue was whether she should have been awarded points for maintenance. That has been the only issue ever since.

2.

In her application she had not provided personal bank statements for the prior three month period and for part of the period she had supplied information for, the funds fell below the minimum required. Between the date of the decision and the hearing of the appeal the appellant lodged bank statements of a Bank of America account in the joint names of herself and her parents with details of transactions between January and September 2009 demonstrating funds well in excess of the minimum balance. The IJ did not consider that this information was sufficient to comply with the Guidance issued by UKBA for post March 2009 applications. He adjourned the case for further information to be obtained from the United States. On 19 October a letter from a Bank of America customer support officer in Florida confirmed the information in the bank statements previously provided.

3.

Paragraph 96 of the UKBA Guidance is in the following terms:

“Only the following specified documents will be accepted as evidence of this requirement:

i.

Personal bank or building society statements covering the three consecutive months.

The most recent statement must be dated no more than one calendar month before the date of application.

The personal bank or building society statements should clearly show:

- the applicant’s name;
- the account number;
- the date of the statement;
- the financial institution’s name and logo;
- transactions covering the three month period;
- that there are enough funds present in the account (then balance must always be at least £2,800 or £800, as appropriate).

Ad hoc bank statements printed on the bank’s letterhead are admissible as evidence (this excludes min-statements from cash points).

If the applicant wishes to submit electronic bank statements from an online account these must contain all of the details listed above. In addition, the applicant will need to provide a supporting letter from his/her bank, on company headed paper, confirming the authenticity of the statements provided. Alternatively an electronic bank statement bearing the official stamp of the bank in question will be accepted. This stamp should appear on every page of the statement.

We will not accept statements which show the balance in the account on a particular day as these documents do not show that the applicant holds enough funds for the full period needed.

ii.

Building society pass book covering the previous three month period:

The building society pass book should clearly show:

- the applicant's name;
- the account number;
- the financial institution's name and logo;
- transactions covering the three month period;
- that there have been enough funds present in the account (the balance must always be at least £2,800 or £800, as appropriate) covering the three month period before the date of application.

iii.

Letter from bank confirming funds and that they have been in the bank for at least three months:

The letter from a bank or building society should show:

- the applicant's name;
- the account number;
- the date of the letter;
- the financial institution's name and logo;
- the funds held in the applicant's account;
- the funds of £2,800 or £800 have been in the bank for at least three consecutive months on and immediately before the date of the letter.

The letter must be dated no more than one calendar month before the date of application.

We will not accept letters which show the balance in the account on a particular day as these documents do not show that the applicant holds enough funds for the full period needed.

iv.

Letter from a financial institution regulated by the Financial Services Authority (FSA) or, in the case of overseas accounts, the home regulator (official regulatory body for the country in which the institution operates and the funds are located) confirming funds:

The letter from the financial institution regulated by the Financial Services Authority or home regulator should show:

- the applicant's name;
- the account number;
- the date of the letter;
- the financial institution's name and logo;
- the funds held in the applicant's account;
- the funds of £2,800 or £800 have been in the bank for at least three consecutive months on and immediately before the date of the letter.

The letter must be dated no more than one calendar month before the date of application.

We will not accept letters which show the balance in the account on a particular day as these documents do not show that the applicant holds enough funds for the full period needed."

4.

The IJ considered that this was a case to which paragraph 96(iv) applied. He accepted the submission from the Presenting Officer then appearing before him that the appellant did not comply with the requirements of the Guidance in that she had supplied a letter from the Bank of America but not the home regulator in the USA.

5.

At [18] he said this:

"As I have stated Mr Duheric's first submission was that on a close reading of paragraph 96 [iv] there was no actual requirement for there to be a letter from the Home Regulator and all that was required was a letter from a financial institution which was regulated. I cannot accept that argument. The way in which the paragraph has been worded makes clear that in the case of accounts originating from the United Kingdom the letter has to be from a financial institution regulated by the FSA but then goes on to make clear that in the case of overseas accounts an equivalent is required from the Home Regulator [official regulatory body for the country in which the institution operates and the funds are located]. The only conclusion I can draw from that wording is that there is a specific requirement that a letter from a regulator in the country of origin is required."

6.

Although no authority appeared to have been relied on by either side, following the hearing the IJ of his own motion identified as relevant to the issues he had to decide, the case of MM (Tier 1 PSW; Art

8; “private life”) Zimbabwe [2009] UKAIT 00037. In that case the AIT was concerned with whether a letter from a Zimbabwean Property Company showing a consistent balance throughout the relevant period could be taken into account. At [12] it said this:

“The Panel was, nevertheless, correct not to take the document into account because it does not fall within the documentation required by the Guidance. It relates to an “overseas account” (albeit not a personal bank account) and there is no letter from the “home regulator” in Zimbabwe confirming the funds as required by para 96(iv) of the Guidance.”

7.

Reconsideration was ordered by SIJ Waumsley in December 2009. The matter now comes before us as an appeal to the UT under the Tribunals, Courts and Enforcement Act 2007 s.10. At the outset Mr Laverty Senior Home Office Presenting Officer sought to withdraw the decision in order for the respondent to re-determine it, as he submitted that the Guidance had not been properly applied by the IJ and the interpretation reached was contrary to the terms of the Guidance. He recognised that under Rule 17(2) of the Tribunal Procedure (Upper Tribunal Rules) 2008 No. 2698, he required the consent of the Upper Tribunal to do so. We indicated that we did not give that consent and would determine the appeal ourselves.

8.

We do so for three reasons taking into account the over-riding objective to the UT Rules:

i.

Reconsideration had been ordered in December 2008 but consent to withdraw the decision was only being sought on 30 April 2010 after the appellant had incurred the cost of representation at this appeal.

ii.

The IJ’s decision had been based on a reading of the Guidance that was now accepted by the respondent to have been wrong. It was important in the public interest that the error be brought to general attention so the parties had the benefit of a reasoned decision of the UT on the question.

iii.

The IJ’s decision in part relied on some observations of the AIT in MM (above) and if that reasoning is flawed it is important that the UT says so.

9.

In the circumstances it was not necessary to call on Mr Duheric to argue this appeal. For the reasons given by Mr Laverty, the IJ’s reasons contained a material error of law in the construction and application of the Guidance. We set it aside and remake the decision.

10.

In our judgment once the appellant had demonstrated by satisfactory evidence that she had the requisite funds for the relevant period in her US bank account the appeal should have been allowed, as the funds were in bank account in her name and those of her parents. We assume for the purpose of this appeal, without deciding the matter, that the Guidance forms part of the Immigration Rules and can be a source of mandatory obligations on claimants, as the AIT determined in NA & Others (Tier 1 Post-Study work – funds) [2009] UKAIT 00025.

11.

The meaning of Immigration Rules and published Guidance is to be interpreted in the light of the plain words used, the context of the words and the apparent purpose of the document taken as a whole (see Ahmed Mahad (Ethiopia) v ECO [2009] UKSC 16 at [10]). Paragraph 96(i) of the Guidance deals with claims where the appellant relies on evidence of statements of bank or building society accounts; paragraph 96(ii) deals with building society passbooks and paragraph 96(iii) concerns cases where the claimant relies not on a statement or a passbook but on a letter from the bank or building society. By context, therefore, paragraph 96(iv) is dealing with accounts with other financial institutions. The initial words of Paragraph 96 indicate that it is dealing with a list of separate specified alternative documents rather than a series of cumulative requirements.

12.

Bank of America is a bank and the bank statements were not electronic bank statements from an on-line account. Paragraph 96(i) of the Guidance applied and there was no need for a letter for a further letter from the Bank confirming what was set out in the statements at all.

13.

The same result would have followed if the appellant had chosen to rely on a letter from a bank under paragraph 96 (iii) as the letter from the bank confirmed all the material requirements for the period required by the Guidance. For the avoidance of doubt we observe that the reference to “the letter must be dated no more than one calendar month before the date of the application” concerns the earliest date in which it can be submitted and not the latest. As the AIT has made clear in NA at [66]-[67] fresh evidence relating to the position at the date of the decision is admissible in in-country appeals pursuant to s. 85(4) of the Nationality, Immigration and Asylum Act 2002.

14.

Accordingly, this was not a case where paragraph 96(iv) was in play at all, and the question of a home regulator was irrelevant to the determination of this appeal. The submissions of the Presenting Officer at the hearing before the IJ were contrary to the plain words of the Guidance. We were informed by Mr Laverty at the appeal that they did not reflect the policy of UKBA either.

15.

The passage from MM (Zimbabwe) cited above was not concerned with bank statements at all and was therefore strictly irrelevant to the issue in this case. However, insofar as the AIT in that case discounted reliance on a statement from a financial institution other than a bank because it was not contained in a letter from a home regulator, we conclude that that passage mis-states the effect of paragraph 96(iv) of the Guidance.

16.

The paragraph refers to a letter from a financial institution regulated by the Financial Services Authority (FSA). We have already explained that this must mean a financial institution other than a bank. The FSA does not regulate overseas accounts, so in the case of overseas financial institutions other than a bank, the institution should be regulated by someone else. This is the home regulator which is then defined by the words in brackets as the official regulatory body for the country in which the institution operates and the funds are located. Read as whole and in the light of the other paragraphs of the Guidance, and by reference to the clear wording relating to institutions regulated by the FSA, in our judgment it is clear that the Guidance is referring to who should regulate the institution in question, but not who should provide the details about the account held at that institution.

17.

The next sentence following the underlined words reflects this despite the absence of punctuation, but we add brackets to the text in order to indicate the way in which these requirements should be read:

“The letter from the financial institution (regulated by the Financial Services Authority or home regulator) should show....”

Again the “or” is the alternative regulator not alternative author of the letter. What follows is a list of requirements that financial institutions could provide but not regulators of those institutions. As Mr Duhavic’s written submissions in support of this appeal make clear, the home regulator would not be in a position to provide the information then set out. To construe the Guidance in a manner that would make compliance with it practically impossible for anyone caught by it is to mis-construe it.

18.

The appeal is allowed. We direct that the appellant be granted two years leave to remain, which is the period she should have been granted once she produced the relevant financial information. We are grateful to both representatives for the clarity and economy of their written and oral submissions that enabled us to indicate the outcome to this appeal on 30 April 2010.

Signed

Mr Justice Blake

President of the Upper Tribunal, Immigration and Asylum Chamber