Upper Tribunal
(Immigration and Asylum Chamber)

Cvetkovs (visa – no file produced – directions) Latvia [2011] UKUT 00212 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 17 May 2011	**On 6 June 2011**

Before

MR JUSTICE BLAKE, THE PRESIDENT

MR BATISTE, JUDGE OF THE UPPER TRIBUNAL

Between

VISA OFFICER, WARSAW

Appellant

and

MR SERGEJS CVETKOVS

Respondent

Representation :

For the Appellant: Mr S Kandola, Home Office Presenting Officer

For the Respondent: No appearance

1. Where a visit visa application is refused because the Visa Officer is not satisfied of the appellant's intentions as a result of only limited documents being produced and translated; and the respondent breaches Procedure Rules by failing to send documentation to the Tribunal, directions can be given indicating that unless the respondent complies with the rules it may be that the Tribunal will assume that the appeal is unopposed.

2. Where the respondent breaches Procedure Rules by failing to send documentation to the Tribunal, and the First-tier Tribunal issues a reasoned decision, based on the material before it, allowing the appeal, a challenge by the respondent based on sufficiency of reason is unlikely to prosper on an application for permission to appeal to the Upper Tribunal.

DETERMINATION AND REASONS

1.
This is an appeal by the Visa Officer against the decision of Immigration Judge Rowlands who allowed Mr Cvetkovs' appeal from the Visa Officer's refusal of his application for a visit visa dated 21 September 2010. In this determination we will refer to the parties as they were before the First-tier Tribunal, Mr Cvetkovs as the appellant and the Visa Officer as the respondent.

2.
From the limited information before us, it appears that the appellant is a stateless person who is resident at an address in Riga, Latvia. He applied for a visa operating as leave to enter to visit his sister who is resident in the United Kingdom. The sponsor and her partner submitted evidence of their means and accommodation and have explained that they are responsible for the funds that the appellant would require to travel to and from the United Kingdom and to support him whilst he remains here.

3.
The Visa Officer was aware that the appellant had visited the United Kingdom previously and had left within the appropriate period. Details of those visits were not apparent on the papers before us, but we understand there were two such visits in 2008 and 2009 and on both occasions the appellant returned to Latvia.

4.
The Visa Officer's refusal notice states as follows:-

"You have not presented satisfactory evidence of your personal and financial circumstances in Latvia. Whilst you have submitted a translation of your college letter some of the other documents submitted have not been translated. I am therefore unable to determine the contents of these documents and they therefore, carry little evidential weight. You have not submitted satisfactory evidence of your employment, income, property, savings or assets. Full knowledge of your circumstances is an important consideration when assessing your application. In the absence of such evidence you have not satisfied me that your circumstances are as settled as claimed and that you are committed to ties outside the United Kingdom. I am therefore not satisfied that you are a genuine visitor or you will leave the UK on completion of your proposed visit."

Elsewhere in the notice of decision it was stated:-

"I note that you have previously travelled to the United Kingdom, however each application must be considered on its own merits and I am not satisfied that your previous travel outweighs my concerns over your current application".

5.
The appellant appealed and in support of his appeal provided the additional information from his sponsors. He asked for the appeal to be determined on the papers. The problem facing the Immigration Judge was that he had not been provided with a respondent's bundle and accordingly knew little or nothing about the purposes of the appellant's visit, from the documents that he had provided and had translated to the Visa Officer, and other data that might have been contained in the application form.

6.
The respondent's failure to provide the material documents in this case is a clear breach of the obligation on him imposed by rule 13 of The Asylum and Immigration Tribunal (Procedural) Rules 2005. It is not sufficient to provide the IJ with simply the notice of the decision to which the appeal relates. The application form and any material submitted by the applicant needs to be provided under rule 13(1)(b) as does any other document referred to in the decision pursuant to 13(1)(c). A failure to provide this material is not merely a breach of the respondent's obligation under the Procedural Rules it will usually frustrate the effective hearing of the appeal. In many cases the appellant himself will wish to rely upon material that he has already provided to the Visa Officer.

7.
The IJ allowed the appeal because he concluded that the adequacy of maintenance and accommodation evidence by the sponsor and her partner combined with the previous compliance with the Immigration Rules on earlier visits enabled him to be satisfied that the appellant was indeed a genuine visitor who intends to leave the United Kingdom at the end of the period of the visit as stated by him and who will be able to be maintained and accommodated without recourse to public funds and employment.

8.
The Visa Officer sought permission to appeal on the basis that the Immigration Judge had not given sufficient reasons for explaining why he was satisfied as to the appellant's intentions. Permission to appeal was granted on 1 March 2011 on the basis that it was surprising that the appellant had not provided any such information for the purpose of this appeal once a negative decision had been reached. Directions were given on 29 March for further documentary evidence to be served but nothing was served by either party. We consider it was unfortunate that permission to appeal was granted in this case given the Visa Officer's clear default in failing to provide the IJ with the relevant documents. It may well have been that the college letter that was produced would have been evidence to satisfy the IJ as to the appellant's status in Latvia and reason to return there. We cannot say. However it is not open to the Visa Officer to complain of the inadequacies of the IJ's reasoning on the material before him where the ECO's default has prevented the IJ from having the documents he was entitled to have before him.

9.
We detect no error of law in this case. The IJ gave reasons for his conclusion that the appellant met the requirements of the rules. In the particular circumstances of this case no more was necessary to comply with the duty to give a reasoned decision.

10.
For the future, we consider that Immigration Judges of the First-tier Tribunal, Immigration and Asylum Chamber are entitled to be robust in determining Entry Clearance appeals where the Visa Officer is not satisfied as to the purpose of the visit from the documents produced but fails to provide those documents to the Tribunal. We trust that Visa Officers will give effect to Rule 13 and provide the application documents. The importance of doing so will become even more apparent when s. 85A of the Nationality Immigration and Asylum Act 2002 inserted by s. 19 of the UK Borders Act 2007 comes into force on 23 May 2011. That section has the effect of significantly reducing the opportunity for supply of documents that were not before the decision maker at the material time.

11.
In our judgment, where the Visa Officer has not provided the documents that he is required to provide, it is open to the First-tier Judge to issue directions that if such documents are not provided within a prompt timetable the appeal will be decided on the basis that the Visa Officer no longer opposes the appeal or supports any contention that he makes in the decision letter. The appeal can then be decided on the papers, and in the absence of evidence of some mandatory ground for refusal it is likely that the appeal will succeed.

12.
For its part, in such cases, judges of the First-tier and Upper Tribunal considering applications for permission to appeal from the respondent on the basis that there was insufficient evidence before or reasoning by the First-tier Judge should generally refuse them. It is not in the public interest that a

public official in flagrant breach of the obligations upon him or her should be able to dispute the Judge’s assessment on such information as was available; this is certainly the case where there has been no prompt response to the directions we envisage being made in [11] above. We recognise that different considerations may arise where there are mandatory reasons to refuse, but even then the starting principle should be that it is for the respondent to provide the information that can be independently assessed.

13.
For these reasons this appeal is dismissed. The Visa Officer must now reconsider the matter in the light of the IJ’s satisfaction that this appellant was indeed a genuine visitor who met the requirements of the Rules.

Signed Date

Mr Justice Blake

President of the Upper Tribunal

(Immigration and Asylum Chamber)