



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

Rana (PBS - Appendix C - overdraft facility) India [2011] UKUT 00245 (IAC)

THE IMMIGRATION ACTS

Heard at Field House

Determination Promulgated

On 3 May 2011

11 May 2011

Before

SENIOR IMMIGRATION JUDGE McKEE

Between

ROHAN RANA

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Appellant: No appearance

For the Respondent: Ms Alice Holmes, Specialist Appeals Team

Proof of the requisite funds for 'Maintenance' under the Points Based System is retrospective. For example, a student must show that the funds were available for a continuous period of 28 days before the application for entry clearance or leave to remain was made. If, throughout that period, an overdraft facility could have been used to withdraw the requisite funds, there is nothing in principle or in the Rules to prevent that from demonstrating that the requisite funds were available. PQ (points based scheme: maintenance: loans) Nigeria [2009] UKAIT 47, which takes the opposite view, was decided pre- Pankina on the basis of the Policy Guidance.

DETERMINATION AND REASONS

1. Rohan Rana is a student from India who initially got leave to enter for one year in October 2009, and then made an in-time application for further leave on 8 October 2010. The application was refused, but the subsequent appeal was allowed by Immigration Judge Sweet. The Secretary of State has been given permission to appeal against that determination, but for convenience I shall refer to Mr Rana as 'the appellant'.

2. The refusal on 12 November 2010 was partly due to the belief that the appellant had outstanding course fees of £3,830, but Judge Sweet was satisfied, from evidence shown to him, that those fees had been paid to Thames Valley University before the application was lodged for further leave. But the appellant also had to show two months' worth of 'Maintenance' under Appendix C, namely £1,200, and the statement of his father's account with IndusInd Bank for the 28-day period before the application did not show that level of funds. At the hearing on 4th January 2011, however, Judge Sweet was told that the appellant's uncle in Birmingham had been jointly sponsoring him along with his father in Jalandhar, and a statement to this effect was subsequently produced from Karpal Singh Sohal. There was also produced a statement of his account with the Bank of India for the period July-November 2010, and a letter from the Handsworth branch of the Bank confirming that Mr Sohal " has been sanctioned an overdraft facility of £130,000 secured against freehold property ", and that at the date of the letter (7 January 2011) Mr Sohal could " draw down funds up to £67,703.22 ."

3. Judge Sweet noted that at the time of the application for further leave, a lesser sum was available to Mr Sohal, but it was still over £20,000, and thus easily covered the £1,200 which had to be available for the appellant's maintenance. In the application for leave to appeal to the Upper Tribunal, it was acknowledged that, in line with CDS (PBS: "available": Article 8) Brazil [2010] UKUT 305 (IAC), the appellant's uncle could be a financial sponsor, but it was queried whether an overdraft facility could be used to show the availability of funds. The pre- Pankina case of PO (points based scheme: maintenance: loans) Nigeria [2009] UKAIT 47 had found that it could not, but that was based on what was said in the Policy Guidance, there being nothing in the Immigration Rules specifically to bar reliance on an overdraft facility.

4. When the appeal came before me today, the appellant appeared unrepresented, while the Secretary of State was represented by Miss Alice Holmes of the Specialist Appeals Team, who was dubious whether an overdraft facility could in principle be used to show maintenance funds. I can see no reason why not. Under the Points Based System, the availability of funds is retrospective. A certain sum of money must be available for a certain period of time (here 28 days) before the application for entry clearance or leave to remain is lodged. The migrant does not currently have to show that the money is still available when his application is decided, or when he arrives in the United Kingdom, or at any other point after he submits his application. If, during the 28-day period, the funds could have been withdrawn from the account in question without exceeding the limit of an agreed overdraft, then it seems to me that they were 'available' to the appellant in the required sense.

5. In the instant case, the sponsor's overdraft facility is secured on freehold property, and is unlikely to be withdrawn at short notice. It is clear from the statement and letter issued by the Bank of India that for the six months between July 2010 and January 2011 the sponsor has been permitted to overdraw his account by up to £130,000, but it has never been overdrawn by more than £118,000, and during the 28 days before the appellant's application, the account was overdrawn by considerably less. Today, the appellant showed up statements of his own account with Lloyds TSB, covering a period last year and indicating that the account is nearly always healthily in credit.

6. Miss Holmes sensibly agreed that, on the facts of the present case, there was every reason to suppose that adequate maintenance has been, and will continue to be, available to the appellant, who is pursuing a degree course with a 'recognised body'.

DECISION

7. The Secretary of State's appeal is dismissed.

Signed

Senior Immigration Judge McKee

(Judge of the Upper Tribunal)