

Student E

- Student made a Tier 4 application in early October 2009.
- Application was returned as invalid in late October 2009 and resubmitted using the same bank statements.
- Student's new application refused - bank statements too old.
- Classic case!

What we did:

- Referred student to OISC level 3 adviser/ solicitor.
- Student lodged appeal and had oral hearing.
- ISA attended AIT with student (as observer).
- ISA advised solicitor on aspects of Tier 4 rules.
- At appeal student submitted fresh bank statements covering the correct period for the valid application submitted.
- Student received judgement upholding appeal.
- Judgement stated: *"I was shown the originals of the Indian bank statements for the Appellant with the Bank of Baroda covering a period from June to November 2009. It is clear from these that the date of application to the Home Office, his account held over 5 lakhs (which is equivalent to a sum well in excess of the required £1,600)"*

Our Ref [REDACTED]
Case ID [REDACTED]
Date 28 November 2009

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Dear Mr [REDACTED]

Application to remain as a Tier 4 (General) Student Migrant

Re: Mr [REDACTED] India [REDACTED] 1984

SECTION A: DECISION AND REASONS

On 23 October 2009 you made a combined application for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant under the Points Based System (PBS) and for a biometric immigration document. An official has considered your application on behalf of the Secretary of State.

In view of the fact that you have claimed 10 points for funds under Appendix C of the immigration rules, but the documents you have provided are dated more than a month prior to the date of your application, the Secretary of State is not satisfied that you have achieved 10 points under Appendix C of the immigration rules and it has therefore been decided that you have not met the rules to be granted leave to remain as a Tier 4 (General) Student Migrant.

Therefore you do not satisfy the requirements of the immigration rules for this category and it has been decided to refuse your application for leave to remain as a Tier 4 (General) Student Migrant under paragraph 245ZX(d) of the immigration rules.

In making the decision to refuse your application, careful consideration has been given to the following:

On 10 July 2009 you were granted leave to enter the United Kingdom as a Tier 4 General Student until 11 November 2009.

SECTION B: POINTS CONSIDERED AND AWARDED

Under the immigration rules for Tier 4 (General) Student applicants must, amongst other things:

- score 30 points under Appendix A (Attributes) and provide the specified documents; and
- score 10 points under Appendix C (Maintenance (Funds)) and provide the specified documents.

Detailed below is your score for each of the areas in which points were claimed and the reasons for awarding the respective points.

Attributes – Valid visa letter

Points claimed	Points awarded
30	30
Points awarded as claimed.	

Maintenance (Funds)

Points claimed	Points awarded
10	0
<p>The bank letter and statements from Bank of Baroda that you have submitted as evidence of funds are both dated 08 September 2009.</p> <p>You did not make a valid application until 23 October 2009, and therefore the evidence of funds that you have provided is dated more than a month prior to the date of your application.</p> <p>Consequently, the Secretary of State is not satisfied that you have achieved 10 points under Appendix C of the immigration rules and it has therefore been decided that you have not met the rules to be granted leave to remain as a Tier 4 (General) Student Migrant.</p> <p>No points awarded for maintenance.</p>	

SECTION C: RIGHT OF APPEAL

You are entitled to appeal this decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002. A notice of appeal is enclosed which explains what to do. Also enclosed is advice from the Legal Services Commission on how to get help.

The appeal must be made on one or more of the following grounds:

- that the decision is not in accordance with Immigration Rules;
- that the decision is unlawful because it racially discriminates against you;
- that the decision is unlawful because it is incompatible with your rights under the European Convention on Human Rights;
- that the decision breaches rights which you have as an European Economic Area (EEA) National or member of such a person's family under Community Treaties relating to entry to or residence in the United Kingdom;
- that the decision is otherwise not in accordance with the law;
- that a discretion under the Immigration Rules should have been exercised differently;
- that your removal from the United Kingdom as a result of the decision would:
 - breach the United Kingdom's obligations under the 1951 Refugee Convention;
 - be incompatible with your rights under the European Convention on Human Rights.

You should not appeal on grounds that do not apply to yourself. You should also give arguments and any supporting evidence, which justifies your grounds.

One-Stop Warning - Statement of Additional Grounds



First-tier Tribunal
(Immigration and Asylum Chamber)

Appeal No: [REDACTED]

THE IMMIGRATION ACTS

Heard at Taylor House
On: [REDACTED] 2010

Determination Promulgated
[REDACTED] 2010

Before
IMMIGRATION JUDGE [REDACTED]

BETWEEN

MR [REDACTED] Appellant

AND

SECRETARY OF STATE FOR THE
HOME DEPARTMENT Respondent

REPRESENTATION

For the Appellant Mr [REDACTED]
For the Respondent No Appearance

DETERMINATION AND REASONS

The Appeal

1. The Appellant, who was present in court, was represented by Mr [REDACTED] of Messrs [REDACTED] & Co, Solicitors. There was no appearance by or on behalf of the Respondent, who had been properly served with a Notice of Hearing. The Presenting Officers Unit was unable to provide a Presenting Officer (as is regularly the case) but had given no indication of any objection to the hearing proceeding in their absence. I decided to exercise my discretion to hear the appeal in the absence of the Respondent under paragraph 19(2)(d) of the AIT (Procedure) Rules.

2. The Appellant, who is an Indian national (DoB [REDACTED]), appealed against the Respondent's decision dated 28.11.09 to refuse his application of 23.10.09 for leave to remain as a Tier 4 (student).
3. I had before me the Respondent's bundle including (inter alia) the application for leave, refusal letter, passport, college visa letter, bank statements, and notice of appeal.
4. I had further documentation from the Appellant including a witness statement of the Appellant and further bank statements from the Bank of Baroda.

The Respondent's Decision

5. The reasons for the Respondent's decision, as set out in his refusal notice, are under paragraph 245ZX(d) of the Immigration Rules, namely that the Respondent was not satisfied that the Appellant had achieved 10 points under Appendix C in that he had not shown the required funds in his bank account, at the relevant time.

Submissions

6. Mr [REDACTED] submitted that the required amount at the date of application was two months maintenance of £800 (i.e. £1,600 in total) as there were no outstanding course fees at that time, as confirmed by the college in the visa letter. The original Bank of Baroda statements in the Appellant's name showed ample balance of funds at the relevant time.

Findings

7. I remind myself firstly that the general burden of proof is upon the Appellant and that the standard of proof is the balance of probabilities. However, there may be specific facts or allegations in respect of which the burden shifts to the Respondent, for example with regard to allegations of forgery where the standard of proof is also higher.
8. The only issue relates to the funding requirements under Appendix C and the issue is a very narrow one, namely whether the Appellant could demonstrate that he had the necessary amount of funds in his account on the relevant date. The Appellant benefits from the transitional provisions which allow the applicant to satisfy the Rules provided the amount is in his account at the date of application.
9. Under the Immigration Rules (and relevant policy guidance) the Appellant is required to show funds equivalent to two months maintenance plus the amount of any unpaid course fees for the first year of the course at the relevant date. I am satisfied that in this case the Appellant must show that he had £1,600 in his account on the date of application in respect of maintenance, as there is evidence that there were no outstanding course fees at that time.
10. I was shown the originals of the Indian bank statements for the Appellant with the Bank of Baroda covering a period from June to November 2009. It is clear from these that at the date of his application to the Home Office, his account

held over 5 Lakhs (which is equivalent to a sum well in excess of the required amount of £1,600).

11. I am therefore satisfied that the Appellant meets the relevant requirements of the Immigration Rules

DECISION

The appeal in respect of the Immigration Rules is allowed

Signed.....
Immigration Judge
(Judge of the First Tier Tribunal)

Dated 21/5/10