

Law Report

Pedantry inappropriate

Supreme Court
October 26, 2015

Mandalia v Secretary of State for the Home Department

Before Baroness Hale of Richmond, Lord Clarke of Stone-cum-Ebony, Lord Wilson, Lord Reed and Lord Hughes
Judgment October 14, 2015

Where a foreign national student's application for an extension of leave to remain in the United Kingdom was deficient solely because he should have sent to the UK Border Agency bank statements showing a specified minimum bank balance for a 28-day period before the application, but the statement sent covered only a 22-day period, albeit showing that there was a preceding statement in existence with sufficient funds, the agency should have given him an opportunity to supply the necessary additional statement before dismissing his application.

The Supreme Court so held in allowing an appeal by Mr Manish Mandalia, an Indian national studying in England, against the decision of the Court of Appeal (Lord Justice Pitchford, Lord Justice Davis and Sir Stanley Burnton) ([2014] EWCA Civ 2) which affirmed the decision of the Upper Tribunal (Immigration and Asylum Chamber) (Upper Tribunal Judge Martin) to uphold the decision of the First-tier Tribunal (Immigration and Asylum Chamber) (Judge Forrester) dismissing Mr Mandalia's appeal against the agency's refusal of his application for leave to remain in the United Kingdom as a student under the Tier 4 (general) points system contained in Part 6A of the Immigration Rules.

At the time of the application in 2012, foreign students had to demonstrate that they had sufficient funds to support themselves by enclosing bank statements showing a mini-

mum balance of at least £5,400 for a consecutive period of 28 days ending no earlier than a month prior to the date of the application. The application form specified the minimum balance but not the period which it had to cover, instead advising applicants to refer to the Immigration Rules and guidance on it before filling it out.

The applicant's bank statement, numbered 64, had covered only 22 days, throughout which time his credit balance had been no less than £11,000, but stated a "carry forward" balance in excess of that amount from statement 63 (and which, when read with statement 62, showed sufficient funds for the missing 6 days).

A UK Border Agency document for its caseworkers, "PBS Process Instruction: Evidential Flexibility", stated that where an application was liable to be refused solely because of the absence of a piece of information which they had reason to believe existed, "including ... bank statements missing from a series", they should ask the applicant for that information before determining the application. No such request was made to the applicant, who was instead informed that his application had been refused and that a decision had been made for his removal.

Mr Abid Mahmood and Ms Nazmun Ismail for Mr Mandalia; **Mr James Eadie, QC** and **Mr Mathew Gullick** for the Home Secretary.

LORD WILSON, with whom the other members of the court agreed, said that the process instruction represented agency policy which in principle applied to it. A public authority had to follow its published policy unless there were good reasons for not doing so.

The Home Secretary had not argued that there were good reasons for not following the process instruction in the case of Mr Mandalia. Her argument was instead that, properly

interpreted, the process instruction did not require the caseworker to alert Mr Mandalia to the deficit in his evidence before refusing his application.

It was argued that in circumstances where the applicant had submitted a bank statement numbered 64, his statements numbered 62 and 63 could not be said to have been "missing from a series".

That submission was misplaced even at the high level of pedantry on which it had been set. Mr Mandalia's bank statements numbered 62, 63 and 64 formed a series.

It must have been obvious to the caseworker, as he studied statement 64, that it formed the last in a series and that the statement or statements which covered the preceding six days, and which turned out to be the statements numbered 62 and 63, were missing from the series.

But it had not been the task of the unfortunate caseworker even to attempt to split such hairs.

The process instruction, read as a whole, rightly stressed the need for flexibility by telling him: (1) That there was no limit on the amount of information that could be requested, provided that the request was not speculative; (2) That bank statements missing from a series represented only an example of the further evidence which should be requested; (3) That, where there was uncertainty as to whether evidence existed, the applicant should be given the benefit of the doubt and it should be requested.

The agency's refusal of Mr Mandalia's application was therefore unlawful because, properly interpreted, the process instruction had obliged it first to have invited him to repair the deficit in his evidence.

Solicitors: **Fountain Solicitors, Walsall; Treasury Solicitor.**

Births, Marriages and Deaths thetimes

PRAISE ye the LORD. O give thanks unto the LORD; for he is good: for his mercy endureth for ever. Who can utter the mighty acts of the Lord? Who can shew forth all his praise? Psalm 106.1-2 (AV)

Births

HOLLAND On 18th October 2015 to Camilla (née Hook) and Samuel, a son, Caspar Michael Christian

TRITTON On 10th October 2015 to Zoë (née Howard) and Jonathan, a daughter, Octavia Louise Victoria.

WELLS On 11th October 2015 to Emma (née Tritton) and Frederick, a daughter, Annabel Poppy Lucinda.

Forthcoming Marriages

MR P.A. GRUNDY AND MISS R.H.E. POOLE
The engagement is announced between Paul, elder son of Mr and Mrs David Grundy of Worcester and Rebecca, daughter of Professor Jill Poole of Warwickshire and Dr Nicholas Poole

Marriages

MR T.O. JOHNSON AND MISS C.S. CONNELL
The marriage took place on Saturday 24th October 2015, at the Forest of Arden Country Club, between Tom and Clare.

Deaths

HURLOCK William John died on 20th October 2015, aged 94, Group Captain. 97 Squadron and 2 ATAF. Much loved husband of Freda, "Fred", of Cambridge and latterly of Lampeter and Presteigne. Funeral 11.30 Friday 30th October, St Andrews, Presteigne. Family flowers only, donations welcome to RAF Benevolent Fund. Inquiries A.W. Hughes & Son 01544 370660.

KIDDLE Francis E at home in the ea Wednesday 21st loved husband of John and Alan and grandad to Olivia be terribly misser family. A private take place follow service at a later only please. Dona payable by chequ hospice c/o A W Fleet GU51 3AJ

Michael John 21st Octobe Loving fath Benjamin and of Charlk Funeral Servc and Susse Tunbridge We November, Family flower: desired, to R c/o Tester Services, Crowbor or via www.test: 018:

MCKECHNIE Ca died on 7th Octo 40th birthday. Bi and mummy to L daughter to Robi fabulous sister t service of remen St. Luke's Churc Sussex on Friday pm. Family flow desired, to Canc

TAYLOR Jenny away peacefully aged 95. Loving mother, grandm grandmother. Se Crematorium at Donations if wis Any inquiries to Funeral Director

The Merchant Navy Medal

The following awards have been made for 2015:

- JS Agnew, Bosun, *Stena Icemax* (Stena Drilling Ltd) for services to the Merchant Navy and to the RMT Union in Scotland.
- Chief Engineer ND Atkinson, Principal Surveyor and Technical Performance Manager, Maritime and Coastguard Agency for services to the International Maritime Labour Convention and to the Southern Port Welfare Committee.
- Capt TJ Bailey, Master, *Hebridean Princess* (Hebridean Island Cruises) for services to safety on high-speed catamaran ferries and to the Nautical Institute.
- Capt NA Barningham, Master, *Anvil Point* (Foreland Shipping) for the rescue of 150 refugees from a vessel in distress, in force 8 conditions, Mediterranean Sea off Malta, 28th to 30th November, 2014.
- Lt Col EJM Brookes TD, for services to the UK Chamber of Shipping and to the Merchant Navy Ratings' Pension Fund. (Honoris Causa)
- Capt C Chandler, Consultant, Company of Watermen and Lightermen

of the River Thames for services to Merchant Navy training and to the Maritime Skills Alliance.

- Capt P Compton, Master, *Pelican* (Adventure Sail Ltd) for services to youth sail training and to the Weymouth branch of the Merchant Navy Association.
- Sister Marian Davey, Port Chaplain for Apostleship of the Sea, East Anglian Ports, for services to merchant seafarers and their dependents. (Honoris Causa)
- GC Evans, Technician, Ships' Electronic Services Birkenhead for services to the certification of Electro-Technical Officers and to the maritime heritage on Merseyside.
- Commodore I Gibb, MBE for services to the cruise line sector and to the Royal Alfred Seafarers' Society and the Mission to Seafarers.
- C Macdonald, Coxswain, Solent Towage Ltd. for the rescue of crew member trapped in capsized tug *Asterix* off Fawley Refinery, Southampton Water, 30th March, 2015. (Act of Courage Afloat)
- JR Matthews, lately Head, Fleetwood Nautical Campus, Blackpool and Fyde College for services to maritime training

and to the safety of life at sea.

- Lt Cdr AJ McPhail, RD*, RNR, lately Director, Thomas Miller and Co Ltd., for services to international maritime law. (Honoris Causa)
- Capt DJ Ridgway, lately Chief Executive Officer, BP Shipping for services to tanker safety and to seafarer's welfare.
- Capt JM Rose, Director, J. Rose Associates Ltd., for services to the Trinity House Yeoman Scheme and to the detection of hazardous incidents at sea.
- Captain R Settle, RFA (Retd) for services to the Royal Fleet Auxiliary Association and to Nautilus International.
- Capt JP Thompson, OBE, RFA (Retd), Deputy Chairman, Royal Fleet Auxiliary Association for services to the welfare of seafarers.
- AJ Tinker, Steward, *Pride of Burgundy* (P&O Ferries Dover) for services to the Channel Ferries sector and to the Dover and Deal Unit of the Sea Cadet Corps.
- Captain P Wright, lately Principal Lecturer, Centre for International Shipping and Logistics, University of Plymouth for services to maritime training and to the Nautical Institute.

Court Circular

Commander-in-Chief (His Excellency Mr George Fergusson).

too, the Keep Yard, to mark the Fiftieth Anniversary of the Regiment.

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