



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/08479/2013

THE IMMIGRATION ACTS

Heard at Field House
On 9 August 2013

Determination Promulgated
On 21 August 2013

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

MR VEERESH PALACHARLA

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Nasim, Counsel
For the Respondent: Mr E Tufan, HOPO

DETERMINATION AND REASONS

1. The appellant is a citizen of India, born on 31 July 1984. His appeal against the decision of the respondent made on 28 February 2013 to refuse him leave to remain as a Tier 1 (General) Migrant and to remove him from the UK by way of directions

under Section 47 of the Immigration, Asylum and Nationality Act 2006 was dismissed by First-tier Tribunal Judge Grimmett.

2. The appellant had claimed 25 points for previous earnings and 5 points for UK experience because he claimed earnings of £40,249 made up of £18,096.86 from his employment with BP and from his self-employment. The respondent took the view that the documents the appellant provided from his accountant confirmed his BP earnings, but the net profit shown in the documents from his accountant was different to that on the application form. The respondent was therefore not satisfied that the appellant met the requirements of Appendix A or of paragraph 245CA(c) of HC 395, as amended.
3. Mr Tufan said that the judge dismissed the appellant's appeal for the reason given in paragraph 12 of the determination. For ease of reference I shall quote that paragraph:
 12. The appellant did not meet the requirements of the Rules because the letter from his accountant does not confirm the exact amount received by the appellant as net profit from self-employment. The gross and net figures that have been provided include the appellant's salaried income whereas the information required by the respondent is a breakdown of self-employed earnings. In addition the letter fails to confirm that the appellant actually received the amount he is claiming or the net profit to which he was entitled as opposed to having merely submitted invoices for the payments.
4. At paragraph 10 of the judge's decision, she had reproduced relevant sections of paragraph 19-SD(a), sub-paragraphs (vi) and (viii) of which require an applicant who is claiming points for self-employed earnings to submit a letter from his accountant on headed paper by confirming that the applicant received the exact amount he is claiming, or the net profit to which he is entitled over the period to be assessed, a profit and loss account or income and expenditure account if the organisation is not trading for profits, and a balance sheet signed by a director. Mr. Tufan said that the judge's conclusion at paragraph 12 was based on paragraph 19-SD(a).
5. It is clear from the appellant's application form at Annex A that at A20, he ticked the boxes for the documents he was submitting with the application. They were business bank statement showing the payments made to him, company/business accounts which clearly showed the net profit of the company, letter from managing agent/accountant confirming that he received the exact amount that he was claiming, or the net profit to which he was entitled and the invoices generated during the period for which earnings were being claimed. At question J4 (A17) he claimed earnings for the period 1 January 2012 to 31 December 2012.
6. At A19 he ticked the box for earnings of £40,000 to £49,999, for which he would be given 25 points. His earnings at BP were not in issue. They were £18,096.86 for which he submitted pay slips and bank statements. From his self-employment as an

IT consultant, he claimed earnings of £22,152, for which he submitted invoices, bank statements and a statement of account from an accountant. At J6 he claimed total earnings of £40,249, which were made up of his income from BP and his self-employment. These were the figures at J5.

7. The appellant's appeal was determined on the papers by the judge. It transpired during the hearing before me that apart from the accountant's letter, account statements and invoices generated from his self-employment, the appellant's pay slips from BP and his bank statements were not submitted with the respondent's bundle. This means that the judge would not have these documents as I did not have them. The bank statements would have confirmed payments into his bank account from his self-employment.
8. The judge found as follows:
 6. The appellant included documents headed management accounts prepared by certified accountants which showed his profits for the period to be £40,249. That total was shown after adding together his self employment income, given as £24,200, and his employment and deducting from the total various expenses. The accompanying letter from the accountants does not give a figure for the Appellant's income from employment but states his total gross income was £42,296.86 and his net income £40,249.42 with his self-employment income as £24,200. That is where it appears the confusion lies in the mind of the Secretary of State as the Appellant in the form gave a lower figure of £22,152 which is the gross figure of £24,200 after deducting the expenses.
 7. The sums are in fact not quite correct. The breakdown of income shows income from employment and self-employment as £42,297 which is described as a gross profit. There is then £3 deposit interest apparently added giving a total income of £42,300 after which expenses of £1,735 and depreciation of £315, a total of £2,050 is deducted leaving an incorrect figure of £40,249 as the profits for the period. That should plainly be £40,250. There is no explanation for that peculiar error.
 8. The total sum should clearly be described as net income for the period rather than profits because part came from employment and part came from self-employment.
 9. The error is, however, small and the Appellant does appear to have shown that he had employment income of £18,097 and net profit from his business, including the £3 interest, of £22,153 taking account of the accountant's apparent error.
9. I agree with Mr Nasim's submission that there was some confusion by the caseworker at the Home Office whether the income from BP and self-employment should be gross income or net income and whether the deductions for expenses as

shown in the accountant's letter should be taken into account. It was his understanding that the income should be gross income. In any event whichever way one looks at it, be it gross income or net income, I find that the total income earned by the appellant from his BP employment and his self-employment which was backed up by the bank statements and invoices, was between £40,000 and £49,099. He was therefore entitled to the 25 points claimed by him. Therefore the judge's finding at paragraph 7 that the total figure should have been £40,250 brings the appellant within that earning bracket. I also find that the judge's finding at paragraph 8 does not in any way undermine the total net income the appellant earned for the period in question. On the evidence before her, I find that the judge should have allowed the appeal.

10. I find that the judge's decision cannot stand. I remake the decision and allow the appellant's appeal.

Signed

Date

Upper Tribunal Judge Eshun