Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/14319/2013
IA/14321/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 6 November 2013	**On 25 November 2013**

Before

MR JUSTICE CRANSTON
UPPER TRIBUNAL JUDGE PINKERTON

Between

THOMAS MANAVALAN
MRS CINO CHIRAYANTH DAVIS

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms A Watterson, Counsel instructed by Joseph Thaliyan Solicitors
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal from a determination of 4 September this year by Judge Jackson, sitting in the First-tier Tribunal. She dismissed an appeal against a decision of the

Secretary of State dated earlier this year to refuse the grant of further leave to remain in the United Kingdom by the first appellant in relation to his application to remain as a Tier 1 Entrepreneur. The second appellant is his dependant and the two cases succeed or fall together.

2. The background is that the appellants are from India. The first appellant, now 36 years old, first came here with valid entry clearance and leave to remain as a Tier 4 (General) Student in October 2008. He was a vet and obtained an MSc at Hertfordshire University. He was subsequently granted further leave to remain as a Tier 1 (Post-Work Study) Migrant until October last year. The second appellant was his dependant.

3. The first appellant's application form named the second appellant as his dependant and named Mr Shivakumar Shyleshkumar as the other member of the entrepreneurial team. In this judgment we will call him the "business partner". The application form contained details of the funds available for investment, the job title given was Laboratory Manager and a firm of solicitors were named as the appellant's representatives. The appellant claimed points pursuant to the points-based system.

4. The Secretary of State refused the application in April as we have said. In the course of the refusal letter mention was made of the failure to provide the name or name of the partner on the website printout and business card pursuant to the Immigration Rules, paragraph 41-SD-C3 of Appendix A. It was also said that the first appellant had not provided details of contracts detailing the services to confirm the business he was engaged in. The Secretary of State also said that there was a failure in relation to the details of third party funding.

5. The appellants appealed. The matter came before the judge. There was a witness statement provided by Mr Shivakumar Shyleshkumar, the business partner, albeit that it was unsigned and undated. The judge at the outset considered a request for an adjournment by Ms Watterson who appears for the appellants today. The basis of the application was that the business partner had made an application for leave to remain as well as a Tier 1 Entrepreneur based on the same business but that his refusal had only just been issued and that the hearing of his appeal would not occur until April 2014. Thus it was said that the two cases were inextricably linked and it would be undesirable for the two to be heard on different occasions with the risk of a different result.

6. The judge refused the adjournment for three reasons. First he said that there was the witness statement from the business partner and there was no missing evidence or view of the business partner which would be needed to determine the appeal before him. Secondly, she said although it could be said that there was a possibility that two different judges might determine the appeal differently, there was nothing in her view to suggest that in the present case there was a real likelihood of that occurring. These were appeals based under the Immigration Rules on the points-based system and that system set out objective criteria to be met for the grant of leave to remain and the appeals were primarily addressed by reference to documentary evidence.

Thirdly, she said that although the business partner's appeal had been listed for April 2014 it was not in the interests of justice to delay the current appeals to fairly determine them. She then went on to make certain findings.

7. Firstly, she said that the first appellant's name was sufficiently identifiable. Secondly, she said that in relation to third party funding she could not accept the submissions that the documents contained all the specified information. Thirdly, she accepted that there were real difficulties in producing contracts showing trading as required by paragraph 41-SD-(c)(iv) of the Rules. She described this as a catch 22 situation in which it was difficult for a person to demonstrate that they had contracts when a third party was unlikely to contract with someone who had no current leave to remain.

8. She then considered paragraphs 46 to 51 of the determination, the Article 8 position. She focused as was natural on the private life aspect. She said that if the appellants did have private life and could show that the interference was of sufficient gravity nonetheless in relation to the evidence that the appellants were to set up a business with £50,000 to invest, there was no evidence about the likely success of that business or its contribution to the economy nor was there any indication of it creating additional employment.

9. She then went on to consider the proportionality assessment required under Article 8 and identified the fact that the appellants could easily return to India, that they had spent the majority of their lives there, they had gained qualifications here which they could then transfer and that what had happened was that the first appellant had in effect established a Shell Company which was not yet trading.

10. Before us Ms Watterson in clear and cogent submissions has taken us to the Rules relevant to the judge's exercise of discretion in relation to the adjournment. She has pointed to Rule 20 of the Asylum and Immigration Tribunal (Procedure) Rules 2005 dealing with the hearing of two or more appeals together which gives the Tribunal a power to direct that that occur when there is some common question of law or fact if for some other reason it is desirable for the appeals to be heard together. Rule 21 deals with the adjournment of appeals and in particular says that where a party applies for an adjournment the Tribunal must not adjourn unless satisfied that the appeal cannot otherwise be justly determined. Ms Watterson identified a tension between the two Rules but in this case she submitted the judge was in error not to have adjourned the hearing. Although Rule 21 leant against unnecessary adjournments they were permitted where the interests of justice required that and in this case she submitted a joint appeal involving both the appellants and the business partner would meet the overriding objectives of the Rules since that would be more fair and efficient. The injustice in this case not only applied to these appellants but, she said and indeed she submitted at one point that this might be her best point, that the injustice extended also to the business partner in that the inextricable connection between the two applications for leave meant that if the first appellant's appeal succeeded then his appeal would succeed and vice versa. She underlined the disadvantages in terms of the Article 8 assessment because the business partner

could well have given evidence about the viability of the proposed business which would have strengthened the appellant's case. She directed us in particular to the determination by the judge where the judge had decided in favour of the first appellant's case in relation to certain aspects of the points-based system which demonstrated that in fact it was not the objective system which the judge had characterised it as has been. In our view the judge's decision on the adjournment cannot be faulted. She considered the issue carefully. She gave good reasons for refusing the adjournment. In relation to the Article 8 point she considered that if we can say so in a very careful and praiseworthy manner. We are especially impressed by the fact that the business partner had made a statement which was before her, albeit that it was unsigned. His evidence was therefore available. He could have appeared at the hearing as he could have appeared today and he could have given evidence before the judge. In any event we cannot see that his case would have greatly strengthened the appellant's case. The issue turned on whether or not the appellants met the points-based system. The first appellant fell short not just in one respect but in as we have said a number of aspects of the requirements of the Rules. The Article 8 point as we said was carefully addressed. We cannot see that the evidence about the future prospects of the business would on the whole have been greatly different given that it would be speculation as to the future prospects of this business. We cannot see that if the cases had been heard together the prospects of the business would have been anything clearer.

11. On this basis we dismiss the appeal.

Signed Date

Mr Justice Cranston