Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/07271/2014
IA/07278/2014
IA/07288/2014

THE IMMIGRATION ACTS

Heard at Bradford	**Determination Promulgated**
On 30 June 2014	**On 29 July 2014**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

MUHAMMAD ASIF EHSAN (FIRST APPELLANT)
AAMENAH RAHAT (SECOND APPELLANT)
H (THIRD APPELLANT)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: In person (First Appellant)
For the Respondent: Mr M Diwnycz, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The first appellant Muhammad Asif Ehsan was born on 27 July 1983. His wife, Aamenah Rahat (date of birth 14 November 1988) is the second appellant and their son H (born in 2011). They are citizens of Pakistan. I shall hereafter refer to the first appellant as "the appellant". The appellant had applied for leave to remain in the

United Kingdom as a Tier 1 (Entrepreneur) Migrant. That application was refused on 31 January 2014 and the appellant appealed to the First-tier Tribunal (Judge Pickup) which, in a determination promulgated on 10 April 2014, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal. As Judge Pickup noted [3], the second and third appellants are entirely dependent upon the appeal of the appellant.

2. As Judge Pickup noted [13],

> In his application, the appellant indicated that he was relying on the Group A route access to £200,000. This comprised monies held in his own HSBC Bank account in respect of which the respondent accepted that he had some £29,854.33 and £175,000 held with the Alfalah Bank in the name of a third party, his brother Asif Ehsan Malik.

3. The appellant had provided a statement from Alfalah Bank together with a letter and certificate from the bank dated 30 November 2013. Judge Pickup was of the view [15] that the letter from the bank "did not comply with 41-SD(a)(i)(10) in that the letter did not include the full address of the third party as required". He also noted, however, that the respondent had not taken any of those issues in refusing the appellant's application. Instead, the refusal letter records that attempts had been made on three separate dates by the respondent to contact Alfalah Bank in order to verify the authenticity of the documents produced by the appellant. No response had been forthcoming, as is made clear in email correspondence adduced by the respondent. Under the heading in the refusal letter "Applicant has access to funds as required" it is recorded that the appellant claimed 25 points but was awarded zero,

> the reason for this being we have attempted to verify the documents with Bank Alfalah Limited using standard procedures but have been unable to do so. We have contacted the issuing bank via email on 30 December 2013, 21 January 2014 and 23 January 2014 and have not been able to get a response. We have therefore been unable to include this evidence in our consideration of your claim for points for access to funds in line with Appendix A of the Immigration Rules.

The same reason is used for the award of zero points for the categories "Funds held in regulated financial institutions" and "Funds disposable in the United Kingdom".

4. At [20], Judge Pickup wrote:

> In the circumstances, I am satisfied the respondent was entitled to seek to verify the bank documents, it made its best efforts to verify those documents, and was entitled to exercise a discretion to refuse the application on being unable to satisfactorily verify those documents.

5. The judge went on [21] to find that he could only consider evidence that was available at the time of the application and submitted with it although he appears in that paragraph to be mainly referring to suggestions made at the First-tier Tribunal hearing by the appellant to the effect that he could transfer the money into another bank account.

6. The appellant told me that he had relied upon the fact that Alfalah Bank Limited appears in Appendix P of the Immigration Rules. In Appendix P, the bank appears in Table 6 under the heading "Financial institutions whose financial statements are accepted – Pakistan". For good measure, however, and notwithstanding on the face of the Immigration Rules that the respondent would accept the statement which he had provided, the appellant had submitted a certificate from the bank dated 30 November 2013. This records,

> We have the consent of Mr Arif Ehsan Malik… to share this information with the Agency. I will confirm the contents of this letter to the agency at their request. That Mr Arif Ehsan Malik… is maintaining his account with Bank Alfalah Limited… and the available balance in his account is RS31,186,821 (£175,000) as of today. This amount of money can be transferred into the United Kingdom on the request of our customer… bank statement account maintenance letter are provided.

7. Judge Pickup was right to note that Section 85A of the Nationality, Immigration and Asylum Act 2002 would normally prevent him from considering evidence which had not been submitted with the application to the respondent. However, Section 85A(4) concerns an appeal under the Points Based System and provides, *inter alia*, at sub-paragraph (c) that post-decision evidence may be "adduced to prove that a document is genuine or valid." That provision is normally brought into play when, in the course of an application, the respondent rejects as false a document submitted by an applicant who then seeks to prove its authenticity. However, there seems to be no obvious reason why the certificate which the appellant submitted with his application, which he intended would reinforce and prove as genuine the statement from the bank which he had provided, should not fall within the provisions of Section 85A. As a result, Judge Pickup arguably erred in law by failing to give any weight to the certificate document provided by the appellant.

8. Even if that conclusion is incorrect, there is, in my opinion, a more fundamental objection to the basis upon which the respondent has refused this application. I fully accept that the respondent is entitled to verify bank and other documents submitted in support of an application. Appendix P begins with a preamble which records [6]:

> UK Border Agency will continue to verify financial information from other institutions [i.e. those other than the institutions whose financial statements UKBA will not accept] on a case by case basis and may refuse applications on the basis of these individual checks.

In the present appeal, as the email evidence shows, the bank did not reply to the respondent's enquiries with the result that the enquiry was declared "inconclusive" (see the letter from Serena Wong to Philip Mangion dated 9 April 2014). It is difficult to see how "on the basis of [this] individual check" the appellant's application should have been refused. Admittedly, there was an absence of evidence to support the appellant's case but no evidence at all (for or against the appellant) was produced as a consequence of the enquiries which might properly have led the respondent to find that money was not available. On the contrary, the respondent had before it evidence from the bank, albeit provided by the appellant, which confirmed that the

money was available. The discretion available to the respondent under the Rules (that is, the preamble to Appendix P) by the respondent was, in my opinion, improperly exercised because the enquiry provided no proper basis for rejecting the appellant's evidence of funds. The decision to refuse the application was, in my judgment, not in accordance with the law.

9. The Rule 24 notice of 22 May 2014 does not argue that the appellant's documents should have been rejected because they did not meet the strict requirements of the Rules nor was that argument advanced by Mr Diwnycz. Instead, the Rule 24 reply submits that it would "be perverse for the judge to accept further evidence from the source [Alfalah Bank] that has declined to verify the original document." With respect, the bank did not decline to verify the documents; it simply did not reply to the enquiries and I find that no such inference adverse to the application could be drawn from the bank's failure to reply. I find that the judge was entitled to consider all the evidence and he should have done so.

10. In the light of my observations and findings, I set aside the determination of the First-tier Tribunal and have remade the decision. I find that the appellant has satisfied the requirements of the Immigration Rules with the evidence which he submitted in support of the application, including the bank certificate. No argument has been put before me to suggest that he had failed to meet the requirements of the Rules for any reasons not contained in the refusal letter. In reaching that conclusion, I note that Judge Pickup himself at [24] added that "I was satisfied on the evidence the appellant is genuinely engaged in business, I have no reason to doubt that monies are available to him." That was the very firm view which I reached during the course of the Upper Tribunal hearing and from which Mr Diwnycz did not dissent. Accordingly, the appeal is allowed.

DECISION

11. The determination of the First-tier Tribunal which was promulgated on 10 April 2014 is set aside. I have remade the decisions. These appeals in respect of the Immigration Rules are allowed.

Signed Date 25 July 2014

Upper Tribunal Judge Clive Lane