



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: IA/13567/2014  
IA/13568/2014  
IA/13577/2014  
IA/13578/2014  
IA/13579/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4 September 2014**

**Determination  
Promulgated  
On 10 September 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHAERF**

**Between**

**FAHEEM IKRAM (FIRST APPELLANT)  
MUHAMMAD YAQUB (SECOND APPELLANT)  
MEHNAZ UD DIN CHOUDHARY (THIRD APPELLANT)  
MEHAK CHAUDHARY (FOURTH APPELLANT)  
MAPARA CHAUDHARY (FIFTH APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr C Mannan  
For the Respondent: Mr N Brammall

**DETERMINATION AND REASONS**

1. The lead Appellants, Faheem Ikram and Muhammad Yaqub born respectively on 17 July 1983 and 11 August 1976 are a Tier 1 (Entrepreneur) migrant team. They and the other Appellants are citizens

of Pakistan. The remaining three Appellants are the wife born 12 January 1979 and two children born in 2009 and 2011 of Muhammad Iqbal, the second Appellant.

2. Both lead Appellants came to the United Kingdom as students. The first Appellant's leave was extended and subsequently varied to a Tier 1 (Post-Study Work) Migrant and the leave of the second Appellant was varied firstly to leave under the International Graduate Scheme and then as a Tier 4 (General) Student migrant and lastly as a Tier 1 (Post-Study Work) migrant. They each sought in time further leave under the Points-Based System as a Tier 1 (Entrepreneur) team which applications were refused by the Respondent on 27 February 2014 together with the dependent applications of Mr Yaqub's family. In respect of all of them the Respondent decided to make removal directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

### **The Decisions and Original Appeal**

3. The lead Appellants' applications as Tier 1 (Entrepreneurs) under the Points-Based System were refused on similar grounds. The Respondent was not satisfied their proposed business plan was viable and that they had sufficient experience. She then went on to award nil points under Appendix A in respect of access to the requisite funds. She considered that such funds as were claimed were not held in financial institutions subject to the requisite regulation regime.
4. On 18 March all the Appellants lodged notices of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002.

### **The First-tier Tribunal's Determination**

5. By a determination promulgated on 16 June 2014 Judge of the First-tier Tribunal Pirotta dismissed the appeals of the lead Appellants because she found at paragraph 17 of her determination that they:-

have very little idea of the fundamental issues in establishing a business, preparing for setting up a business, carrying out market research or learning about the competition, alternative strategies for the target businesses and dealing with the public by providing information and advice.... and have not shown that they had carried out any but the most cursory investigation into the area into which they purport to be offering their services.

She noted the absence of any explanation for the fact that the first Appellant was contributing less capital than the second Appellant but they were to take equal shareholdings. She did not accept the claims made by both lead Appellants as to the availability of funds: see paragraphs 19 and 20 of the determination. The appeals of the other Appellants as dependants of the second Appellant were dismissed.

6. The Appellants sought permission to appeal. The grounds assert the Judge's findings were vague and not warranted; that the Judge had made no findings in respect of any claim under Article 8 of the European Convention and had not considered the interests of the minor Appellants under Section 55 of the Borders, Citizenship and Immigration Act 2009. Additionally the Judge had failed to make findings on the decisions under Section 47 of the 2006 Act. At paragraph 19 of the grounds there is a claim the Judge applied a higher standard of proof than was requisite. Other paragraphs detail specific areas where the Appellants disagreed with the Judge's determination.
7. On 14 July 2014 Judge of the First-tier Tribunal De Haney granted permission to appeal. He commented that the six pages of the grounds for appeal were for the main part simply a disagreement with the Judge but nevertheless the Judge had failed to deal with the Article 8 issues and so granted permission to appeal.

### **Upper Tribunal Hearing**

8. Mr Mannan opened by submitting that the tests for assessing the viability and credibility of a business referred to in paragraph 245DD(iii) of the Immigration Rules were not known (**CHECK REFERENCE**) and without identified tests the decision maker had no place from which to start an assessment.
9. The fact that the team members were contributing capital in unequal proportions but had equal shareholdings was not a matter which went to the viability or credibility of their proposed business.
10. The Judge at paragraphs 21 and 22 of her determination considered various elements of the lead Appellants' market research and business plan without reference to any established criteria and therefore her conclusions in these two paragraphs were not sustainable.
11. The second Appellant had raised the matter of respect for his private and family life in his witness statement and in the grounds of appeal and the Judge had erred in failing to give any consideration to such claim. I looked through the Tribunal file and found the second Appellant's application referred to the presence of his family and when interviewed he had raised the issue of his wife and children.
12. In response Mr Brammall for the Respondent argued that whether or not there were established tests or criteria at this stage in the proceedings was not the issue. What had to be addressed was whether and, if so, where the Judge had made an error of law. Looking at the determination her findings were adequate on all aspects raised by the appeals. There was no explanation offered by the lead Appellants for the imbalance for the shareholding arrangements which did not reflect their respective capital contributions or the means by which such contributions were being

raised. Paragraphs 21 and 22 of the determination contained adequate reasons to support the Judge's findings.

13. Turning to the ground for appeal relying on Article 8 of the European Convention, even if the Judge had erred in not specifically addressing the claim under Article 8 of the European Convention, the question still needed to be asked whether such an error was material. The second Appellant needed to show what evidence there was before the Judge about his private and family life in the United Kingdom upon which the Judge could and should have made findings. No evidence had been before the Judge and none had subsequently been submitted, not even in the Appellants' bundle filed in readiness for the hearing in the Upper Tribunal. The conclusion should be that such a claim had little, if any, merit and therefore if the Judge had erred in not addressing the claim it would have made no difference to the outcome.
14. In response Mr Mannan submitted that nevertheless the Judge should have dealt with the claim under Article 8 and regretted that he had no copy of any record made for the Appellant of the hearing before the First-tier Tribunal.
15. I referred to the Judge's Record of Proceedings in the Tribunal file noting that the evidence before the Judge was simply that the first Appellant had a Lithuanian girl-friend in Northampton and his mother and two siblings in Pakistan and that the second Appellant's wife and children and a sibling were in the United Kingdom and that his parents and another sibling were in Pakistan. The record showed it had been submitted for the Respondent that the lead Appellants had always known their leave to enter or remain in the United Kingdom was temporary. There was a reference to the judgment in *Patel and Others v SSHD [2013] UKSC 72* paragraph 59 noting that if limited status derived entirely from the Rules would not be sufficient to add weight to a claim under Article 8 for favourable treatment outside the Rules.
16. The recorded submissions for the Appellants do not contain any material reference to any evidence to support the Article 8 claim.

### **Findings and Consideration**

17. I noted that other than described there was no evidence in the Tribunal file of the private and family lives of the lead Appellants outside their business relationship. There was no documentary evidence to explain the position of the second Appellant's dependants, to show the length of time they have been in the United Kingdom, what pre-school playgroups or similar they might attend or of any other ties to wider family or the community. The statements made for the hearing in the Upper Tribunal referred simply to the presence of dependants and the length of time the lead Appellants have been in the United Kingdom.

18. Following a discussion with both representatives about the best way to proceed, I decided and announced in the hearing room that the determination of the First-tier Tribunal contained an error of law in that the Judge had failed expressly and specifically, even if briefly, to address the claim raised under Article 8 by the second Appellant. However there was no evidence of any substance to support that claim before the Judge or before the Upper Tribunal notwithstanding the Upper Tribunal's second direction of 18 July 2014 that:-

The party shall prepare for the forthcoming hearing on the basis that, if the Upper Tribunal decides to set aside the determination of First-tier Tribunal, any further evidence, including supplementary oral evidence, that the Upper Tribunal may need to consider if it decides to re-make the decision, can be so considered at that hearing.

19. I also announced my decision that such error of law was not material on the basis of the evidence before the Judge and further the lack of evidence from the Appellants showed that even if it had been material the appeal under Article 8 was bound to fail in the Upper Tribunal at the hearing before me.
20. I should add the Judge gave adequate and sustainable reasons for her findings on the viability and credibility of the lead Appellants' business plan. There is no need for detailed criteria or tests to be established. A Judge will be entitled to and indeed expected to apply common sense and a minimum level of appreciation of commercial reality. The Appellants had failed to show that on the evidence before the Judge she had not given adequate or sustainable reasons for her conclusions.
21. The consequences that the First-tier Tribunal determination did not contain an error of law in respect of which any other differently constituted Tribunal might have come to a different conclusion and so it is not an error of law such that it should be set aside. Therefore, the First-tier Tribunal's determination shall stand.

### **Anonymity**

23. There was no request for an anonymity direction or order and having considered the appeal I find there is no need for such.

### **DECISION**

**The determination of the First-tier Tribunal did not contain an error of law such that it should be set aside. Accordingly, it shall stand to the effect that:-**

**The appeal of each of the Appellants is dismissed.**

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Signed/Official Crest  
2014

Date 09. ix.

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal