Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/13931/2014
IA/14279/2014

IA/14282/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 5th September 2014	**On 10th September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY

Between

MR ASHOK KAMANCHETTIAR GOVIN DARAJAN (1)
MR MATHIYALAGAN MANI (2)
MRS ANITHA BALASUBRAMANIAN (3)
(NO ANONYMITY ORDERS MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr L Youssefian of DJ Webb & Co Solicitors
For the Respondent: Mr P Nath, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The appellants are all citizens of India. The first appellant was born on 10th June 1976, the second appellant was born on 2nd January 1980 and the

third appellant (who is the second appellant's wife) was born on 25th July 1985. The first and second appellants entered the UK as Tier 4 student migrants, remained on this basis, and then had their leave to remain extended on the basis of Tier 1 post study work. The third appellant had leave to remain as the second appellant's dependent wife. On 1st February 2014 the first and second appellants applied to remain in the UK as Tier 1 entrepreneur migrants, with the third appellant applying as the second appellant's dependent wife. These applications were refused on 6th March 2014. The appeals against the decisions were dismissed by First-tier Tribunal Judge Pirotta, in a determination promulgated on the 26th June 2014.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Levin on the 14th July 2014 on the basis that it was arguable that the First-tier judge had erred in law in failing to give reasons why the unaudited accounts in the appellant's bundle did not satisfy the requirement at paragraph 46 –SD (a) (ii) of Appendix A to the Immigration Rules.

Submissions- Error of Law

3. Mr Youssefian submitted that the key issue was whether the letters that the appellant had submitted to the respondent from Andy & Co Accountants and Tax Consultants dated 23rd and 30th January 2014, which were undoubtedly before the respondent at the time of decision (as they are recorded as having been received in the refusal letter) and were before Judge Pirotta, suffice to meet the requirements of paragraph 46-SD (a) (ii) with reference to (b) of Appendix A to the Immigration Rules. It was disputed by the respondent that these documents could be seen as unaudited accounts. However if the requirements of unaudited accounts are looked at in paragraph 46 – SD (b) all the issues required are recorded in these letters: for instance they show the money invested by the applicants; they show the shareholders and the amounts and value of the shares; give the name of the accountant; and the date the accounts were produced.

4. Mr Youssefian argued that the letters produced by Andy & Co Accountants were from a member of a UK recognised supervisory body – see FCCA (2024959) written after Mr Idowu's name – but in any case this was not a point disputed in the refusal letter or relied upon to dismiss the appeal by the First-tier Tribunal.

5. Mr Youssefian argued that the letter produced by Andy & Co Accountants were also the "accounts compilation report" as this documentation was not defined in the Immigration Rules. I said that I understood that this was usually a statement by the accountant that they do not give any assurances in relation to the compiled financial statement when giving a write up of data provided by a client without doing an audit, but this was not something which was defined (as far as I was aware) within the Rules or guidance.

6. Mr Nath accepted that the letters of 23rd and 30th January 2014 gave all the details required by paragraph 46 –SD (b) of Appendix A but he could

not say more as the Secretary of State did not conceded that these sufficed as unaudited accounts.

7. Mr Nath argued that the Secretary of State had put the issue of the compilation report and whether the accounts were produced by a qualified member of a UK Recognised Supervisory Body in question in the refusal letter by setting out the whole of paragraph 46 – SD (a) of Appendix A.

8. Mr Youssefian responded by saying that the focus throughout the refusal was on the absence of accounts, and the fact that the documents submitted did not fulfil the requirements of paragraph 46 –SD (b) of Appendix A of the Immigration Rules. This had also been the approach taken by the First-tier Tribunal at paragraph 11 of the determination.

9. Both parties agreed that the substance of the letters of 23rd and 30th January was such that they showed sufficient funds if they were in a suitable form, and found to fulfil all the requirements at paragraph 46- SD (a) and (b) of Appendix A. Both agreed that they did not need to make further submissions for the re-making of the appeal if an error of law were found.

10. At the end of the hearing I reserved my determination.

Conclusions – Error of Law

11. I find that Judge Pirotta erred in law at paragraph 19 of her determination as she stated that the appellants had simply not submitted any accounts, and so did not comply with the criteria set out in the Immigration Rules, and did not consider whether the letters of 23rd and 30th January 2014 sufficed to meet the requirements for unaudited accounts. Indeed it seems she may have been under the misapprehension that these letters had not been submitted to the respondent at all given what is said at paragraph 20 of the determination. However it is certain that they were submitted to the respondent as this is set out in the refusal letters for the first and second appellants under “evidence of investment” for Appendix A. It was also clear from the grounds of appeal, which are set out at paragraph 12 of Judge Pirotta’s determination, that the appellants argued that these letters were sufficient to qualify as unaudited accounts. I thus find that the First-tier Tribunal erred for failure to give reasons why the letters of 23rd and 30th January 2014 did not suffice as unaudited accounts as defined and required by the Immigration Rules.

12. I therefore set the decision of Judge Pirotta aside.

Conclusions – Re-making

13. Mr Nath could not point me to any aspect set out in paragraph 46 – SD (b) of Appendix A that was not covered by the letters from Andy & Co Accountants. I find that these letters therefore meet the requirements of unaudited accounts.

14. I am also satisfied that they were written by an accountant who is a member of a UK Recognised Supervisory Body as the author, Mr Idowu, has FCCA and a number written after his name, which means he is the member of the Association of Chartered Certified Accountants. This is listed as a recognised UK supervisory body at the A18 of the glossary in the Tier 1 (entrepreneur) policy guidance.

15. The issue of the "accounts compilation report" is more difficult to determine. I do not accept the argument that I do not need to be satisfied that there was such an item before the Secretary of State. It is clearly part of the Immigration Rules, and Mr Nath has been clear that the Secretary of State does not accept that this aspect was met by the appellants. It is also clear that the ability to meet the whole provision relating to accounts at paragraph 46-SD of Appendix A, of which this is a part, was the basis of the refusal of the appellants. The whole of this provision was set out in full in the refusal. Mr Youssefian has argued that the letters are also an accounts compilation report. I note that the Tier 1 (entrepreneur) policy guidance version 4/2014 at paragraph 113 (which formed part of the appellant's bundle before the First-tier Tribunal) and the Immigration Rules at paragraph 46- SD of Appendix A do not say what is required of this document, and the title of the section of the relevant section of the guidance at 113(ii) is "unaudited accounts and an accountant's certificate of confirmation".

16. When all is considered in the round I find that the letters which certainly explicitly "confirm" all the relevant information provided and give the sources of the information relied upon (bank statements, completion statement from Chancery CS Solicitors, share certificates and Companies House documents) and thus make clear that the information is not as a result of an audit should also be seen as an accounts compilation report.

17. I therefore find that first and second appellants have satisfied all aspects of the Immigration Rules relating to entrepreneurs as this was the only issue, according the reasons for refusal letter, which prevented their obtaining full points under Attributes Appendix A, and the respondent was satisfied that they were entitled to full points under Appendix B and C. As such they were not properly refused under paragraph 245DD as they could in fact meet the requirements of paragraph 245DD (b) of the Immigration Rules. As the second appellant qualified for a grant of leave as a Tier 1 (entrepreneur) migrant the third appellant was not properly refused under paragraph 319C of the Immigration Rules.

Decision

18. The decision of the First-tier Tribunal involved the making of an error on a point of law.

19. The decision of the First-tier Tribunal is set aside.

20. The decision is re-made allowing the appeals under the Immigration Rules.

Deputy Upper Tribunal Judge Lindsley
5th September 2014

Fee Award

In the light of my decision to re-make the decision in the appeal by allowing it, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make a whole fee award as all necessary documents were submitted with the application and thus by proper consideration of these the need for an appeal could have been avoided.

Deputy Upper Tribunal Judge Lindsley
5th September 2014