Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/14953/2013
IA/14962/2013

THE IMMIGRATION ACTS

Heard at Bradford	**Determination Promulgated**
On 21 January 2014	**On 19 February 2014**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

KANWARDEEP DHAWAN
VIJAY KOMMARAJU

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr T Hussain, instructed by Kingswell Watts, Solicitors
For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants, Kanwardeep Dhawan and Vijay Kommaraju, are citizens of India. The appellants appealed to the First-tier Tribunal against the decision of the respondent dated 21 April 2013 refusing their applications to remain in the United Kingdom as Tier 1 (Entrepreneur) Migrants. The First-tier Tribunal (Judge Shimmin), in a determination promulgated on 24 October 2013, dismissed the appeals. The appellants now appeal, with permission, to the Upper Tribunal.

2. The issue in the appeal is a relatively narrow one and concerns the construction of paragraph 41 of Appendix A of HC 395. To qualify as Entrepreneur Migrants, the appellants had to show that they possessed at least £50000. That sum must be evidenced by:

> (ii) For money held in the UK only, a recent personal bank or building society statement from each UK financial institution holding the funds, which confirms the amount of money available. Each statement must satisfy the following requirements:
>
> …..
>
> (4) the account must be in the applicant's own name only (or both names for an entrepreneurial team), not in the name of a business or third party;

At [32], Judge Shimmin recorded that Mr Balbalia (for the appellants before the First-tier Tribunal) submitted that the purpose of sub-paragraph (4) of paragraph 41 was to provide that the bank account in question should not be in the name of a business or third party. Judge Shimmin went on to record that Mr Balbalia submitted that "the respondent was treating each appellant as the third party of the other. He submits that the account [properly, the separate accounts held by each of the two appellants in their sole names] satisfied the Rules if it is in the name of the appellant or both of them." The Rules provided that each appellant should have access to a minimum sum of £50,000; as the grounds record, Mr Dhawan held funds in a Lloyds TSB account totalling £25,505. Mr Kommaraju also had money in a Lloyds TSB account (£25,003). The problem for the appellants lay in the fact that the money was not held in a joint account but in separate accounts in their respective individual names.

3. Judge Shimmin did not agree with the analysis submitted by Mr Balbalia. He found that "the Rule requires each appellant to have access to £50,000. In this case each party does not have such access unless their business partner is treated as a third party."

4. I find that Judge Shimmins' construction of the relevant Immigration Rule is correct. The requirement for the specified funds is quite clear in the Rules. The bank account holding the funds must be in the applicant's own sole name or joint names for an entrepreneurial team (as in this case). Funds held in a joint bank account are held joint and severally. In law, this means that all of the money in the account may be

controlled or disposed of as his or her absolute property by each of the account holders. In other words, the effect of holding money in a joint account is the same as if one held the money in an account in one's own sole name. For the two separate bank accounts of these two individual appellants to be treated as if they constituted a single joint account frankly makes no sense at all. In law, each applicant only had ownership and absolute control of the funds held in their respective bank accounts. In the cases of each appellant, those funds were insufficient to satisfy the Immigration Rules.

5. The second part of the appeal is advanced on the alternative basis that, whilst Judge Shimmin may have been correct in his construction of the Immigration Rules, he failed to apply the so-called flexibility policy which was addressed by the Tribunal in *Rodriguez (Flexibility Policy)* [2013] UKUT 00042. The grounds submit that the judge incorrectly found that the flexibility policy of the respondent had ceased by the time of the applications in these appeals and have been replaced by paragraph 245AA. The judge found that paragraph 245AA did not assist the appellants who submit that they should have been allowed by the respondent further time to submit a letter from their respective banks which stated unequivocally that the money in each account was freely available to the other applicant.

6. In the light of what I have said above regarding the nature of joint bank accounts, I am not persuaded that such a letter would be sufficient to satisfy the requirement of Appendix A. However, the appellants do not dispute the judge's finding that paragraph 245AA could not assist them. They seek, instead, to prove that the evidential flexibility policy examined in *Rodriguez* rather than the later Immigration Rule, should have compelled the respondent to give the applicants extra time to obtain the necessary letters from their banks. That argument is no longer tenable in the light of the Court of Appeal decision in *Rodriguez* [2014] EWCA Civ 2. The evidential flexibility policy was never intended to enable applicants to perfect faulty applications by the submission of entirely new evidence. Whether or not Judge Shimmin was wrong to find that the policy had been replaced by the Immigration Rule, the applicants could not succeed in any event.

7. For the reasons I have stated above, these appeals are dismissed.

DECISION

8. These appeals are dismissed.

Signed Date 11 February 2014

Upper Tribunal Judge Clive Lane