

**Upper Tribunal
(Immigration and Asylum
Chamber)**
IA/15392/2014



Appeal Number:

THE IMMIGRATION ACTS

Heard at Bradford
On 8th October 2014
Prepared

**Determination
Promulgated
On 21 October 2014**

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR RASH PAL SINGH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Parkin, of Ryan Adams Solicitors
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of India born 21st March 1984. He appealed to the First-tier Tribunal (Judge A M Baker) against the decision of the Respondent dated 12th March 2014 to refuse him leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant under the Points Based System.

2. The FtT dismissed the appeal in a determination promulgated on 20th July 2014. The Appellant now appeals with permission to the Upper Tribunal.
3. I find that the determination of the FtT should be set aside. I reach that conclusion for the following reasons which I can set out here briefly.
4. However before I do so I should pause to say that at the original hearing before the First-tier Tribunal Judge there were two Appellants (the Appellant before me and his business partner Mr Akolkar Shantanau Sharadrao). It is correct to say that the Appellant's business partner has not appealed and therefore the only appeal before me is that of Mr Pal Singh.
5. The First-tier Tribunal Judge having heard evidence sought to make findings on the credibility of the Appellant and his business partner. At paragraph [13] under the heading 'My Findings of Fact', the Judge says,

"This is a relatively finely balanced case where the Appellants came over in evidence as earnest and plausible, but lurking doubts do remain that they are entirely genuine and have discharged the burden of proof upon them herein".

It is hard to see what conclusion the Judge has come to on the Appellants' credibility. This lack of clarity in turn affects whether the Judge properly appreciated where the burden of proof lay and whether his findings can be relied on in the face of such an inconsistent statement.

6. By paragraph [16] of the determination the Judge finds that the Appellants have not discharged the burden of proof upon them but it is unclear how the Judge related his credibility findings to the standard of proof set out.
7. Despite Mr Duffy's valiant attempt to save this determination, it is trite law that an Appellant is entitled to know why he won or lost his appeal and what evidence the Judge is accepting and what is he rejecting. I am satisfied that the FtT Judge's determination is legally unsustainable because it is unclear on these matters.
8. Having announced at the hearing that I was satisfied that the determination contained such error as to require the decision to be remade, I canvassed with the representatives the appropriate disposal of this appeal. Mr Parkin did urge that I remake the decision, but since Judge Baker's findings must be infected by his unclear remarks on credibility, I consider the only proper course of action is for me to set aside the determination of the FtT and to direct that the decision be remade in that Tribunal by a Judge other than Judge A M Baker. None of the findings shall stand.

DECISION

9. The determination of the First-tier Tribunal which was promulgated on 20th July 2014 is set aside. None of the findings of fact shall stand. I direct that the appeal should be heard again in the First-tier Tribunal by a Judge other than Judge A M Baker.

No anonymity direction is made

Signature

Judge of the Upper Tribunal

Dated

20 October 2014