



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

Appeal Numbers: IA/18001/2013
IA/18004/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 26th March 2014**

**Determination
Promulgated
On 28th April 2014**

Before

UPPER TRIBUNAL JUDGE RENTON

Between

**UTHARA RAJAN
SIVARAMKUMAR MURUGAN ARUNAGIRI
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms E Daykin, Counsel instructed by Berkleys Solicitors
For the Respondent: Ms A Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellants are a husband and his dependent wife. They are both citizens of India. On 2nd November 2012 the second Appellant applied for leave to remain as a Tier 1 (Entrepreneur) Migrant with his wife as his

dependant. Those applications were refused for the reasons given in a Notice of Decision dated 23rd May 2013. The Appellants appealed, and their appeals were heard by Judge of the First-tier Tribunal Chohan (the Judge) sitting at Birmingham on 29th January 2014. He decided to dismiss the appeals for the reasons given in his Determination dated 13th February 2014. The Appellants sought leave to appeal that decision, and on 6th March 2014 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. It is not in dispute that the second Appellant had set up a company called Shoora Limited of which he was a director. His application for leave to remain as a Tier 1 (Entrepreneur) Migrant was refused because he had failed to score sufficient points under Appendix A: Attributes because he had not satisfied the requirements of paragraph 245DD of HC 395 in that he had not submitted the documents required by paragraphs 41-SD(c)(iii) and (iv) of Appendix A of HC 395 to show that his business was actively trading. It was said that the contract between Shoora Limited and Raenu Limited submitted in support of the application did not meet those requirements.
4. The Judge dismissed the appeals for the same reasons.
5. At the hearing before me, it was agreed between the representatives that the Judge had erred in law in reaching this conclusion. He had applied an Immigration Rule that was not in force when the Appellants had made their applications. I find an error of law accordingly.

Remade Decision

6. I then proceeded to remake the decision of the Judge. It was further agreed between the representatives that another contract submitted with the application, that with Permtemps Limited, met the requirements of the relevant Immigration Rule in all respects except that it did not give a landline telephone number for that company. It was also agreed that the decision of the Respondent was not in accordance with the law in that she had failed to apply her own Evidential Flexibility Policy in force when the decision was made in an attempt to rectify this defect. I so find.

Decision

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

I set aside the decision.

I re-make the decision in the appeal by allowing it to the extent of finding that the Respondent's decision to refuse the application for leave to remain was not in accordance with the law.

Anonymity

The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I find no reason to do so.

Signed

Date

Upper Tribunal Judge Renton