



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/18007/2013

THE IMMIGRATION ACTS

Heard at : Field House
On 11 July 2014

Determination Promulgated
On 18 July 2014

Before

Deputy Upper Tribunal Judge Chana

Between

MR FAHIM ALI
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss F Shaw of Counsel briefed by Hillcrest Solicitors LLP,
For the Respondent: Mr P Duffy, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan born on 18 September 1980 appeals against the decision of First-tier tribunal judge Prior promulgated on 31 March 2014 to dismiss his appeal against the respondent's decision 9 May 2013 refusing his application for further leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant.
2. First-tier Tribunal Judge Davidge gave the appellant permission to appeal stating that it was arguable that the First Tier Tribunal Judge erred in finding that mandatory information was missing from the specified documents concerning

the appellant's sponsor and paragraph 245AA did not assist him. He found that on the facts of the case, it is capable of doing so.

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First-Tier Tribunal's findings.

3. The first-tier Tribunal found the following.

I. Subparagraph 41-SD (b) (ii) (7) provides that a letter from a legal representative confirming the validity of signatures on each third-party declaration provided must clearly show, *inter-alia*, the following. "If the third party is not a venture capitalist firm, seed funding competition or a UK government Department, the number of the third party's identity document (such as a passport or - an identity card), the place of issue and the dates of issue and expiry". This was a mandatory documented information requirement of the rules no doubt designed to ensure that the respondent could be reasonably satisfied that the chosen legal representative of the applicant had properly checked the identity of the third-party providing the funds for the applicant's business, was properly identified and meaningful details recorded from the chosen identity of the third party.

II. In this application this mandatory requirement was neither fully nor satisfactorily complied with. The legal representative's letter did not, in terms of the provisions of the rules clearly show the number of the third party's national identity card since the letter did no more after stating that the third party's name continue as follows CNIC nO 35201-148 7714-one" I find as claimed by the author of the refusal letter, the letter did not clearly show the number of the third party's identity document. Furthermore the letter failed to state at all the place of issue of the card and his issuance and expiry dates. Although the appellant's counsel referred to the matter of evidential flexibility she did not seek explicitly to rely upon paragraph 245 AA of the rules. In any event it was my view that such reliance could not have assisted the appellant. It was the appellant's testimony that he was aware that the legal representative's letter had to contain details of the third-party (his father's (identity and that it was legal advice that he secured the necessary letter from Pakistan.

III. The other requirements of the Immigration Rules were satisfied.

Grounds of appeal

4. The appellant in his grounds of appeal states the following which I summarise. The Judge found that the legal representative's letter was not adequate as per the requirements in paragraph 41-SD or appendix A of the Immigration Rules. The representative's letter plainly included the third party's identity card number and therefore the Judge erred in concluding otherwise. It is however accepted that the place and date of issue and date of expiry of the third party's identity document was not given.

5. The appellant submits that after receiving the respondent's refusal decision, he sought legal advice and became aware of the omission in the legal representative's letter and secured the necessary letters and his explanation was misinterpreted. The Immigration Rules provide for flexibility where there is such an omission and the Judge erred in failing to consider this evidential flexibility approach.
6. The Judge did not say why paragraph 245AA of the Immigration Rules could not assist the appellant. There are two provisions within paragraph 245 AA that ought to have been considered and applied to the appellant's case. Paragraph 245 (a) states that "where part 6A or any Appendix 6 referred to in part 6A states that specified documents must be provided, the Entry Clearance Officer, Immigration Officer or the Secretary of State shall only consider documents that has been submitted with the application, and will only consider documents submitted after the application when they are submitted in accordance with subparagraph (b). Subparagraph (b) (iv) states that if the applicant has submitted a specified documents in which "a document does not contain all the specified information" the Entry Clearance Officer may contact the applicant's representative in writing and request the correct documents. The requested documents must be received at the address specified in the request within seven working days of the date of the request."
7. It is hard to think of a clearer example of a situation where a document does not contain all of the specified information than in the current case. The only missing information on the appellant's father's identity document was the place, date of issue and expiry date.
8. The second provision within paragraph 245 AA that could have assisted the appellant is contained in paragraph 245 AA (d) which provides that if the applicant has submitted a specified document (iii) "which does not contain all of the specified information, but the missing information is verifiable from (1) "other documents submitted with the application", the application may be granted exceptionally, providing the Entry Clearance Officer, Immigration Officer or the Secretary of State is satisfied that the specified documents are genuine and the applicant meets all the other requirements".
9. In the appellant's case the identity of the third-party investor, who is the appellant's father, was abundantly clear from the other documents submitted with the application and that paragraph 245 AA (d) potentially applied.
10. Paragraph 245 AA confers a discretion within the Immigration Rules. The exercise of this discretion is therefore challengeable on appeal under section 84 (1) (f) of the Nationality Immigration and Asylum Act 2002. The Judge was therefore obliged to consider whether this discretion or to have been exercised differently and was free to substitute his or her own discretion for that of the decision maker. His failure to even consider doing so was a clear material error of law. The Judge therefore materially erred by his failure to properly consider paragraph 245 AA and the decision should be set aside.

Rule 24 response

11. The respondent in their view 24 response was not in the bundle of documents.

The hearing

12. It was accepted by both parties at the hearing that the Judge had made a material error of law in not considering all the evidence in the appeal and the decision is not in accordance with the law and should be sent back to the Secretary of State awaiting their lawful decision.

Decision whether there is an error of law in the determination

13. The complaint made against the Judge is that he did not say why paragraph 245 AA would not assist the appellant's appeal.
14. The Judge stated that in the appellant's application this mandatory requirement was neither fully nor satisfactorily complied with. The legal representative's letter did not, in terms of provisions of the Immigration Rules, clearly show the number of the third party's national identity card since the letter did no more than state his father's identity card as, "CNIC No; 5201-148 7714-1". He said that letter did not show the number of the third party's identity document. It also failed to state the place of issue of the card and the issuance and expiry dates. He said that this is a mandatory requirement because the respondent should be reasonably satisfied that the chosen legal representative of the applicant has properly checked the identity of the third-party providing the funds for the appellant's business, were properly identified and meaningful details recorded from the chosen identity document of the third-party.
15. Paragraph 245 AA states that when a document provided by the appellant does not contain all the specified information and if the missing information is verifiable from other documents submitted by the appellant, the Secretary of State has a discretion within the Immigration Rules to either contact the appellant to obtain further information or to consider whether she is satisfied the requirements have been fulfilled because other documents submitted with the application demonstrate that the appellant's sponsor is deemed to be a valid third-party support for the appellant's application for an entry clearance as an entrepreneur.
16. The appellant claims that the his father's identification number was provided within the legal representative's letter which matched the translation of the third party's identification card, his passport, bank statements and two further letters from the legal adviser which were in the appellant's bundle and this evidence was sufficient to show a valid sponsorship.
17. The law is clear that there are certain circumstances where the respondent must look at all the evidence provided by the appellant to see if the missing information is verifiable from other documents. The respondent also has a duty to contact the appellant to either verify details in an application or ask the appellant

to provide further information to satisfy the Immigration Rules and I find that in this case this was not done.

18. In the circumstances, I find that there was a material error of law in the determination and I set it aside.

DECISION

19. The appeal is allowed to the extent that the First-tier determination, dismissing the appeal against the refusal of variation of leave to remain as an entrepreneur, is set aside, and the application for variation of leave remains outstanding before the Secretary of State, to await a fresh decision in the light of my findings.

Signed by

First-tier Tribunal Judge
Sitting as a Deputy Judge of the Upper Tribunal

Mrs S Chana

Dated this 16th day of July 2014