Upper Tribunal
(Immigration and Asylum Chamber)

THE IMMIGRATION ACTS

Heard at Field House	**Promulgated:**
On 2 June 2014	**On 3 June 2014**

Before

UPPER TRIBUNAL JUDGE PITT

Between

SURENDER REDDY RIKKALA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Vishal of Malik & Co
For the Respondent: Mr Kandola, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the decision promulgated on 7 April 2014 of First-tier Tribunal Judge Brenells which refused the appeal against the Secretary of State's decision dated 1 May 2013 refusing leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant.

2. It was common ground that the point before me was narrow. The appellant provided a copy of a contract with his initial application. There was no dispute that the copy of the contract did not meet the requirements of paragraph 41-SD (c) (4) (iii) of Appendix A of the Immigration Rules as it was not signed by the appellant on every page. The appellant then provided an original contract which was considered by the respondent in the refusal letter dated 1 May 2013. It was found wanting as it did not contain the post code of the other contracting party. That meant that it fell

foul of paragraph 41-SD (c) (4) (iii) (3) which specifically requires the "postal code" of the other party involved in the contract.

3. Judge Brenells found for the respondent, finding at [17] that the provisions of paragraph 245AA of the Immigration Rules could not assist the appellant. Judge Brenells reasoning was that the relevant version of paragraph 245AA (b) (ii) referred to the respondent seeking remedial action by an appellant where "a document is in the wrong format" and the absence of the post code of the other contracting party was not a "format" issue.

4. I did not find that Judge Brenells erred in making that finding or in relying on it to dismiss the appeal as the evidential requirements were not met. It was not my view that the absence of the post code of the other contracting party from the contract provided by the appellant, indeed, from both contracts provided, was a shortcoming that could be properly characterised as relating to "the wrong format" such that the appellant fell to benefit from paragraph 245AA (b) (ii). The contracts were in the correct format but, as found by Judge Brenells, omitted information specifically required by the Immigration Rules.

5. The appellant also sought to rely on the respondent's policy relating to evidential flexibility. The case of Rodriguez (Flexibility Policy) [2013] UKUT 00042 (IAC) was overturned by the Court of Appeal in SSHD v Rodriguez and Others [2014] EWCA Civ 2. It was held that the Secretary of State had not been under any obligation to afford applicants for leave to remain as Tier 4 (General) Student Migrants in the United Kingdom any opportunity to remedy defects in their under her evidential flexibility policy. The Court of Appeal indicated that the evidential flexibility policy was not designed to give an applicant a general opportunity first to remedy any defect or inadequacy in an application or supporting documentation so as to save the application from refusal after consideration.

6. In light of the above I did not find that there was any legally binding obligation upon the respondent to invite the appellant to remedy the defect in the contract he provided. The common-law principle of fairness does not impose such an obligation and nor do the specific provisions of 245AA of the Immigration Rules.

7. I was referred to Shebl (Entrepreneur: proof of contracts) [2014] UKUT 00216 (IAC). At [5] the Upper Tribunal says this:

> "The Secretary of State's position is that the Immigration Rules envisage a contract included in a single document, and that a series of documents that together show all material required by the Rules does not constitute "a contract". We can see no proper basis for that assertion. The intention behind the Rules is that the claimant be able to show that he is genuinely trading. It strikes us as inconceivable that the entrepreneur route was to be confined to the types of trading in which contracts are made by single documents. Paragraph 41-SD very properly specifies that there must be documentary evidence sufficient to show genuine contracts, and containing

> sufficient information to enable the Secretary of State to check the matter with the other parties for the contracts if she chooses to do so. But there is a world of difference between requiring contracts to be evidenced by a proper paper trail and requiring each contract to be contained in a single document. In our judgment the Rules require the former, but not the latter."

8. I did not find that could assist this appellant. It is not that the required information was available, just in different documents before the respondent which was the case in Shebl. The post code of the other contracting party was not available at all. The appellant argues that the respondent could have found it easily, demonstrated by the appellant in his appeal bundle at pages 19 and 20, where a "google" search of the details that were provided for the other contracting party and the director of that company brought up full (and entirely consistent details) including the post code. It remains the case that the burden was on the appellant to provide those documents not for the respondent to seek them from the appellant or look for them independently herself.

9. For these reasons I do not consider that the First-tier Tribunal made an error in law. The appellant's appeal is accordingly dismissed.

Signed:  Date: 2 June 2014

UPPER TRIBUNAL JUDGE PITT