



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/18201/2013
IA/18210/2013

THE IMMIGRATION ACTS

Heard at Field House
on 18 March 2013

Determination Promulgated
On 27th March 2014

Before

**MR JUSTICE JEREMY BAKER
UPPER TRIBUNAL JUDGE MACLEMAN**

Between

**OLATOKUNBO ADIO
JOSHUA OLUWAFEMI ADIO**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Miss P Glass of Counsel, instructed by A2 Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal, promulgated on 22 January 2014, which overturned her refusal to grant Tier 1 (Entrepreneur) status on the points-based system to Mrs Olatokunbo Adio.
2. The original application to the Secretary of State had been made by Mrs Adio on 20 March 2013. That application was considered by the Secretary of State and refused in a letter dated 7 May 2013. Under the points-based system Mrs Adio required 75

points under Appendix A. The reason for the refusal was the Secretary of State's determination that there had been non-compliance with certain aspects of the documentation which required to be provided by Mrs Adio.

3. There were four matters upon which the Secretary of State relied. Firstly, Mrs Adio had not provided any marketing materials for her business. Secondly, she had not provided evidence of trading activity in the form of one or more contracts. Thirdly, the contract provided did not meet the criteria, as it failed to detail the services provided by the applicant. Fourthly, the contract did not meet the criteria, as there was no telephone number or e-mail address for her business on the contract.
4. When the matter came before the First-tier Tribunal it was dealt with by reference to *Rodriguez* [2013] UKUT 42. The First-tier Tribunal described the lack of the provision of the phone number and email address as a minor omission that could well have been rectified had it been brought to Mrs Adio's attention under the evidential flexibility policy. In these circumstances, and now that the omissions had been cured, the Tribunal allowed Mrs Adio's appeal.
5. The Secretary of State quite understandably took the point on appeal to this Tribunal that the original decision in *Rodriguez* has been overruled by the Court of Appeal: [2014] EWCA Civ 2. However, during the course of the hearing before us it became apparent that certain matters upon which the Secretary of State relied in reaching her original decision were erroneous.
6. Firstly, it appears that the bundle of documents which the Secretary of State sent to the First-tier Tribunal included two contracts which had been provided to her by Mrs Adio with her application. As Ms Isherwood on behalf of the Secretary of State very properly conceded, this would appear to preclude her from relying upon the second of the four matters originally relied upon by the Secretary of State as a reason for refusing Mrs Adio's application.
7. Secondly, when those contracts are examined, as the First-tier Tribunal found, each of them sets out the services which Mrs Adio proposed to provide to her customers. Therefore the third of the matters originally relied upon by the Secretary of State falls away.
8. Thirdly, although it is correct that neither of those contracts provides Mrs Adio's telephone number and email address, if reference is made, as the Secretary of State did in her decision letter, to 41-SD of the Immigration Rules, what is required is not the applicant's telephone number and email address, but the customer's telephone number and email address. If one looks at the contract between Mrs Adio and Kikstem Services, it is apparent that it does provide the latter's telephone number and email address. Although it is correct that the other contract does not provide such details, if one makes further reference to 41-SD, it is clear that an applicant is only obliged to provide the Secretary of State with one such contract, which has

been provided in this case. Thus the fourth matter upon which the Secretary of State relied falls away, without recourse to the original decision in *Rodriguez*.

9. That leaves the first point upon which the Secretary of State relied, namely the lack of provision of any marketing materials in the business. It is clear that under part 41-SD of the Immigration Rules at subparagraph (iii)(iv) this requirement may be fulfilled by the provision of a document establishing the applicant's: "Personal registration with a trade body linked to the applicant's occupation".
10. Regrettably, and through no fault of Ms Isherwood, she did not have available to her the original file of documentation which was provided by Mrs Adio to the Secretary of State in March 2013. However, we do have Section 7 of Mrs Adio's application form in our bundle, from which it is apparent that two of the documents listed there were "RSPH documents". Miss Glass who appears on behalf of Mrs Adio asserts that the document which we have seen, which is a document from The Royal Society for Public Health showing that at the material time the applicant was a Fellow of that Society, would provide sufficient evidence, as the First-tier Tribunal found, of compliance with the requirement to provide marketing materials. We agree, as the First-tier Tribunal held, that if this document had been provided to the Secretary of State with the original application by Mrs Adio, it would establish sufficient compliance with that part of 41-SD. The only question which has arisen is whether or not that document was provided to the Secretary of State by Mrs Adio with her application. We have reached the conclusion that it is likely that it was provided by her. Not only was the document specifically listed at section 7 of the application form, but, it having been so listed, it is accepted that its absence would very likely be a matter which would have been raised by the Secretary of State with Mrs Adio prior to the decision being made. In these circumstances we have reached the conclusion that the First-tier Tribunal was entitled to conclude that Mrs Adio had fulfilled this aspect of 41-SD. In these circumstances the first of the matters relied upon by the Secretary of State also falls away.
11. Accordingly and for the reasons we have provided this appeal must be dismissed.

24 March 2014
Mr Justice Jeremy Baker