



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/18465/2013

THE IMMIGRATION ACTS

Heard at Field House, London
On 22nd July 2014

Determination Promulgated
On 22nd August 2014

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

MR NASEER AHMAD
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Aslam, of Counsel
For the Respondent: Mr P Nath, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of the First-tier Tribunal (Judge Norton-Taylor) which in a determination dated 2nd May 2014 dismissed the Appellant's appeal against the Respondent's decision dated 8th May 2013, refusing leave to remain in the UK as a Tier 1 (Entrepreneur) Migrant.

Background

2. The Appellant arrived in the United Kingdom on 15th February 2009 as a student. He was granted various extensions of leave and those grants of leave remained until 28th March 2013. On 7th February 2013 he made application as a Tier 1 (Entrepreneur). This application was based on a partnership with a Mr Tariq Javed a Pakistani national. The company established by the partners is called Zarco Consultancy and Business Management Limited (Zarco). The Appellant's partner Mr Javed made a similar application on the same day as the Appellant. The Respondent refused both applications on 8th May 2013 and both applicants appealed to the First-tier Tribunal. For some reason their appeals were not linked. Mr Javed's appeal was heard by Tribunal Judge Bryant on 15th October 2013 and allowed on this basis; whilst he had not met the requirements of the Immigration Rules, the Respondent had failed to act fairly in deciding the application under the Evidential Flexibility Policy then in force. Therefore the decision was not in accordance with the law. The respondent duly reconsidered Mr Javed's application and he was granted leave to remain as a Tier 1 (Entrepreneur).
3. By the time the Appellant's appeal came before Judge Norton-Taylor, the scope of the Evidential Flexibility Policy had been reduced by virtue of the clarification set out in the Court of Appeal's judgment in *SSHD V Rodriguez [2014] EWCA Civ 2*. Judge Norton-Taylor set out with great clarity the three issues contained in the Respondent's refusal decision and which were now before him. This is set out below:

"The Respondent's decision

The Respondent was not satisfied that the Appellant had provided relevant information with his application. In particular, three issues are taken against the Appellant:

- a) That he failed to provide evidence that he and Mr Javed had joint funds totally £50,000 or more, to that they each had access to such funds (in other words, a declaration containing this information was missing);
- b) The contract for service submitted did not contain the two partner' names or the date of the contract;
- c) The advertising material submitted was missing their names, telephone number and email address.

In light of this, no points were awarded under Appendix A to the Rules. Paragraph 245DD(b) was not satisfied, and the application fell to be refused.

Points for English language and Maintenance were awarded".

4. The Judge then set out the evidence before him and noted that although the Appellant was present at the hearing and represented, he was not called to give oral evidence. The hearing proceeded by way of submissions only.

5. He noted that the Respondent's bundle contained at page 4, a copy of a document entitled 'Declaration of Availability of Funds'. The Appellant claimed that this document, or "Declaration" as it is referred to, was submitted to the Respondent, as part of the original application.
6. Two important points were noted by the Judge so far as this 'Declaration' is concerned.
 - (i) It was claimed by the Appellant's representative that the 'Declaration' had been submitted with the application form.
 - (ii) It was conceded by the Respondent's representative at the hearing, that had this 'Declaration' in fact been submitted with the application, it would be sufficient to satisfy the requirements of Appendix A.
7. So far as paragraph 3 (b) above is concerned; the Judge noted that in the terms of the contract for services, the Appellant's name was not stated within the document. The document was signed and, contrary to the assertion in the reasons for refusal letter of 8th May 2013, it was dated. He noted, however that the Appellant's name was not printed or written in an unmistakably legible form.
8. Point (c) in paragraph 3 above appears to have fallen away because at [17] the Judge notes.

"In respect of the advertising material, the pamphlet that had been submitted did contain the names of the two partners in it, and the relevant contact details were also present. Mr Irwin did not concede this issue, but he made no additional submissions on it".

After considering all matters the Judge went on to dismiss the Appellant's appeal.

9. The Appellant sought and was granted permission to appeal that decision. It is right that I set out here the relevant parts of the grant of permission.

"The grounds of application claim that the First-tier Tribunal Judge made arguable errors of law within the determination firstly, by failing to properly consider the evidence with regard to a "missing" declaration about the availability of joint funds for their business venture and secondly, by failing to give proper reasons for upholding the Secretary of State's representative's reasons for refusing the application because, the contract upon which the Appellant (and his business partner) relied in accordance with the requirements for specified documents to be produced in accordance with the Immigration Rules did not identify their names other than by the signatures...I am satisfied that the manner in which the First-tier Tribunal Judge dealt with the issue of the signatures on the contracts and the name of the Appellant may disclose an arguable material error of law. For that reason I find that the Appellant's application should be granted..."

10. The grant of permission appears to be quite specific in the terms set out in the last three lines of the grant.

Error of Law Hearing

11. Mr Aslam who appeared on behalf of the Appellant followed the lines of the grounds seeking permission. He submitted that the First-tier Tribunal Judge fell into error in his findings at [31] to [39]. These are the findings which led the Judge to conclude that the Appellant had not met the mandatory requirements of the specified documents in Appendix A 41-SD(a)(ii)(iv). The findings are not sustainable since the Judge's fact finding is flawed.
12. The second challenge advanced by Mr Aslam amounts to this. The contract for services was signed by the Appellant (and Mr Javed). The Judge was wrong to say as he does at [45] that the omission of the name in the contract means that the appeal must fail under the Immigration Rules. Nowhere in the Rule does it say that the Appellant's name has to be typed or printed. A signature on a contract shows the signatory's name and therefore satisfies the Rule. Even if the signature was insufficient for the Rule, this would mean that the document was in the wrong format and accordingly paragraph 245AA(c) of appendix A would come into play. The Respondent would be obliged to show that she had exercised her discretion to reconsider the error or omission. This she had not done and therefore her refusal was unlawful for failing to follow her own policy. He submitted the matter should be remitted to the Respondent to consider the terms of her own policy. This would of necessity result in her granting the application.
13. Mr Nath on behalf of the Respondent relied on his Rule 24 response. Firstly, the First-tier Tribunal Judge was entitled to find that the declaration relating to the joint funds had not been submitted with the application. He gave very careful and detailed reasons at [31] to [39] for coming to this conclusion. Those reasons were open to him. Likewise the Judge was entitled to find that the Appellant's name was not on the contract and has given adequate and proper reasons for coming to that conclusion. The Judge also addressed the Appellant's fairness argument in [47], [48], [49], [50] and [51]. There is no error of law disclosed in the determination and it should stand.

Has the Judge Erred ?

14. The first challenge to the Judge's determination amounts to this. The Appellant did submit with the application, the necessary evidence to show that he had access to joint funds of £50,000. This was the document (a copy of which is annexed to this determination) headed 'Declaration of availability of funds'. The date on this declaration is 5th February 2013. Against the Appellant is the Respondent's refusal which declares that no such evidence was provided.
15. It is surprising, in view of the nature of this challenge, that the Appellant, who attended before the First-tier Tribunal Judge, was not called upon to give oral evidence on this point.

16. That being so, the Judge had to carry out the fact finding exercise by reference to the available evidence before him. This he did. He looked, with care, at the surrounding evidence contained in the documents. Having done so he set out full reasons why he did not accept that the declaration or rather evidence of joint access to the requisite £50,000 had been submitted with the Appellant's Tier 1 (Entrepreneur) application. Those are the reasons set out by the Judge in [31] to [40]. I find that those conclusions were fully open to the Judge on the evidence before him. He considered further whether paragraph 245AA could assist the Appellant but noted at [41],

"Paragraph 245AA cannot assist the Appellant here, and Mr Ahmad did not seek to argue otherwise. A mandatory item of evidence was missing from the application. There was not (sic) duty upon the Respondent to request it".

The determination of the First-tier Tribunal Judge in my judgment, discloses no error of law on that point. That being so, the Appellant's appeal is bound to fail under the Immigration Rules.

17. So far as the second challenge to the Judge's determination is concerned, the question is whether a signature can be said to provide sufficient information to meet the requirements of the relevant Rule. The Rule here is clear, Paragraph 41-SD(c)(iv) of the Rule states,

Paragraph 41-SD of Appendix A states:

If the applicant is applying under the provisions in (d) in table 4, he must provide:...

- (iv) one or more contracts showing trading. If a contract is not an original the applicant must sign each page of the contract. The contract must show:
 - (i) The applicant's name and the name of the business,
 - (ii) The service provided by the applicant's business; and
 - (iii) The name of the other party or parties involved in the contract and their contact details, including their full address, postal code, landline phone number and any email address.

18. The Judge considered in [43] to [45] the purpose behind the Rule. The Judge acknowledged that the contract for services document, which was put forward with the application, contained the date and was signed by both the Appellant and his partner. However the Judge found that the signature by itself was insufficient to meet the Rule. He gave reasons why he came to that conclusion. He noted at [44] that the purpose behind the Rule is to ensure that there is evidence showing "that the applicant themselves (sic) is engaged in the business". I would venture to add to that, it is so that the Respondent can be satisfied that a valid contract is in existence. I see no reasons to disturb the Judge's findings on that point. Even if I am wrong about that, the fact remains that the Appellant's case falls down because there is no reason to disturb the Judge's findings on the failure of the Appellant to provide the

mandatory information about the availability of joint funds. Therefore even if the Judge fell into error on the second challenge raised, it would not materially affect his decision to dismiss the appeal.

DECISION

19. The determination of First-tier Tribunal Judge Norton-Taylor discloses no error of law such that the determination should be set aside. The decision dismissing the Appellant’s appeal therefore stands.

No anonymity direction is made

Signature
Judge of the Upper Tribunal

Dated

Fee Award

I have dismissed the appeal and therefore there can be no fee award.

Signature

Dated