



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/18607/2013

THE IMMIGRATION ACTS

Heard at Field House  
On 21<sup>st</sup> July 2014

Determination Promulgated  
On 29<sup>th</sup> July 2014

Before

UPPER TRIBUNAL JUDGE RENTON

Between

ALI AUN SIDDIQI  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss J Smeaton, Counsel instructed by Marks & Marks Solicitors  
For the Respondent: Mr S Kandola, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant is a male citizen of Pakistan born on 13<sup>th</sup> January 1987. He first arrived in the UK on 9<sup>th</sup> October 2009 when he was granted leave to enter as a

student. Thereafter the Appellant was granted successive periods of leave to remain as a student and a Tier 1 (Post-Study) Migrant until 25<sup>th</sup> March 2013. On 5<sup>th</sup> December 2012 the Appellant applied for further leave to remain as a Tier 1 (Entrepreneur) Migrant. That application was refused on 14<sup>th</sup> May 2013 for the reasons given in a Notice of Decision of that date. The Appellant appealed, and his appeal was heard by Judge of the First-tier Tribunal Camp (the Judge) sitting at Birmingham on 21<sup>st</sup> March 2014. He decided to allow the appeal for the reasons set out in his Determination dated 3<sup>rd</sup> April 2014. The Respondent sought leave to appeal that decision, and on 9<sup>th</sup> May 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. The reason given for the decision to refuse the Appellant leave to remain is that he failed to score any points under Appendix A (Attributes) of HC 395. This was because whereas the Appellant had produced with his application evidence in the form of statements from Barclays Bank plc showing him to have access to funds amounting to £34,419.48, he had not submitted the required evidence to show an investment in his business of £16,550 as claimed. This investment was represented by a commercial lease of business premises, and the purchase of a car and office furniture. The lease and receipts for the purchases had been produced, but the unaudited accounts of the Appellant's business did not show such an investment.
4. The Judge's reasons for allowing the appeal are given in paragraphs 11 to 13 inclusive of the Determination. After recording the submissions made on behalf of the Appellant, the Judge wrote as follows:

"12. Ms Knight (for the Respondent), addressed me solely to rely upon the refusal letter.

13. I see no flaw in the submissions made on behalf of the Appellant. He has shown that he had access to the required level of funds at the date of application. This was not contested at the hearing, except formally, on the Respondent's behalf."

At the hearing, I heard submissions from both parties. Mr Kandola addressed me first when to begin with he referred to the grounds of application. He argued that the Judge had erred in law in that he had given inadequate reasons for his decision. The Judge had referred to the refusal letter, but he had not dealt with its contents. Mr Kandola then argued that the error of law was material in that the evidence produced by the Appellant with his application did not satisfy the requirements of the Immigration Rules nor the accompanying Policy Guidance. In particular, the types of investment relied upon by the Appellant were not of the kind allowed by the Immigration Rules. In this connection Mr Kandola referred me to paragraph A19 of the Policy Guidance. It was argued in the Appellant's Skeleton Argument that the investments relied upon constituted a loan to the company and therefore did come

within the Immigration Rules. However, no terms of the loan had been provided as required by paragraph 46S-D(a)(iii) of Appendix A of HC 395.

5. In response, Miss Smeaton referred to her Skeleton Argument and the authorities mentioned therein. She argued that the Determination of the Judge was challenged only on the grounds of insufficient reasons. However, the Judge had not erred in law in this respect because in his Determination he had set out the issues, the evidence, the submissions, and his conclusion. The basis on which he had allowed the appeal was clear.
6. In the alternative, Miss Smeaton submitted that any error of law was not material in that the Appellant met the requirements of the Immigration Rules for a grant of leave to remain as a Tier 1 (Entrepreneur) Migrant. In order to score sufficient points under Appendix A: Attributes, the Appellant had to show access to funds of £50,000 as required by paragraph 245DD(b) of Appendix A of HC 395. It was not in dispute that at the relevant time the Appellant held the sum of £34,419.48, and therefore had to account for the difference of £16,550. This the Appellant had done by his investment in the purchase of office equipment and a company car, and the payment of a deposit and advanced rent for the commercial lease of his business premises. These amounts were shown in the company's accounts, and should not be treated as loans requiring particular forms of evidence. The Respondent could not reply upon what was said in the Policy Guidance following the decision in **Pankina**.
7. I found an error of law in the decision of the Judge. That error is that the Judge gave insufficient reasons for allowing the appeal. On the basis of what he wrote in paragraphs 12 and 13 of the Determination, the Respondent would not know why the appeal was allowed. It is not sufficient to merely refer to the refusal letter, even if at the hearing the Respondent's representative did no more than that. It was behoven upon the Judge to deal with the material contents of the refusal letter, and this he failed to do. This amounts to an error of law and I therefore set aside the decision of the Judge. I then proceeded to remake that decision.

### **Remade Decision**

8. Both representatives declined the opportunity to make further submissions to me, and I was invited to remake the decision on the basis of the evidence before the Judge.
9. The sole issue in this appeal is whether the payments made by the Appellant for office furniture, etc., can be taken into account when calculating if the Appellant had access to funds of at least £50,000 in order to score sufficient points under Appendix A: Attributes.
10. The Appellant relies upon the accounts of his business, Enem Marketing Solutions Limited, for the period ending on 28<sup>th</sup> February 2013. Those accounts are unaudited, but there is no significance in that fact as the company was exempt from audit under Section 477 Companies Act 2006. The accounts show fixed tangible assets of £7,550 which are specified in paragraph 1.4 of the Notes to be fixtures, fittings and

equipment, and motor vehicles. There are produced at pages D1 to D3 of the Appellant's bundle receipts showing these purchases. The balance of £9,000 is shown under the heading "Other Debtors" in the accounts. This figure correlates with the payments required at paragraphs 3.1.(iii) of the Commercial Lease Agreement also produced. Therefore it can be said that the accounts have shown an investment as claimed by the Appellant in accordance with paragraph 46-SD(b) as Miss Smeaton argued. In my view these payments can be treated as investments regardless of what is said in the Policy Guidance. I therefore find that the Appellant has scored sufficient points under Appendix A: Attributes and satisfies paragraph 245DD of HC 395. The decision of the Judge is remade by allowing the appeal.

### **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 remake the decision in the appeal by allowing it.

### **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 see no reason to do so.

Signed

Date

Upper Tribunal Judge Renton