



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: IA/19321/2013
IA/19322/2013

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On the 14th November 2014

On the 9th December 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

**MR MOHAMMAD MOHIUDDIN
MR ABDUR RAHMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss O Momoh, Counsel instructed by Universal Solicitors
For the Respondent: Mr P Armstrong, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Mohammad Mohiuddin and Abdur Rahman against the decision of Tribunal Judge Bird promulgated on the 30th June 2014 when their appeals against the Secretary of State's refusal of their Tier 1 (Entrepreneur) applications were dismissed. The basis of the dismissal is

that they had failed to provide relevant documents with the application and essentially that the date at which the documents should have been provided was the date on which the application was made.

2. Permission to appeal to the Upper Tribunal was initially refused but then granted by Judge Kopieczek on the 8th October of this year and he noted that this may involve consideration of when an application is made, with reference to paragraph 34G of the Immigration Rules and the decisions of Khatel and others (s85A; effect of continuing application) [2013] UKUT 00044 (IAC) and Nasim & Ors (Raju: reasons not to follow?) [2013] UKUT 00610 (IAC).
3. The case which binds me is the case of Raju. That is a Court of Appeal case decided on the 25th June 2013 with the citation [2013] EWCA Civ 754, having quoted paragraph 34G, which for these purposes states as follows:

“For the purposes of these rules, the date on which an application or claim (or a variation in accordance with paragraph 34E) is made is as follows:

 - (i) where the application form is sent by post, the date of posting.”
4. Relying on that paragraph, at paragraph 24 the Court of Appeal said this:

“An application is made when paragraph 34G says it is made. The Secretary of State at the date of her decision assesses the evidence which determines whether the applicant for leave to remain as a Tier 1 (Post-Study Work) Migrant has accumulated 75 points.”
5. There was a discussion of how that works but they conclude as follows:

“AQ does not assist these Respondents. It is not authority for the proposition on which the Upper Tribunal relied, that the applications were ‘made’ throughout the period starting with the date of their submission and finishing with the date of the decisions.”
6. By making that decision the Court of Appeal have overruled as well the decision in Khatel, another Upper Tribunal decision with the same panel as in Raju, an earlier decision in 2013 that applications were to be treated as continuing until such time as they were decided. I am satisfied that the law is now clear. The application was made when it was submitted, the evidence that was required had to be submitted with the application and it is accepted that the evidence submitted in the form of the contract relied upon did not contain the specified information. On that basis the decision of Judge Bird was correct and there is no error of law.
7. Reliance has been placed by Miss Momoh on paragraph 245AA of the Immigration Rules relating to evidential flexibility. That does not assist the Appellants either. The Secretary of State is not obliged to follow the evidence that has been submitted and to point out errors that are made. The rule permits a Secretary of State or an Immigration Officer to do so.

The word used is “may”. It is permissive, it is not mandatory, and a failure to do so is not an error of law.

8. Accordingly I am satisfied that the determination of Judge Bird is entirely correct. There is no error of law and the Appellants’ appeal to the Upper Tribunal is dismissed.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Parkes