



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/20478/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 27<sup>th</sup> January 2014

Determination Promulgated  
On 20<sup>th</sup> February 2014

Before

UPPER TRIBUNAL JUDGE RENTON

Between

SANA ULLAH ULLAH  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr A Chohan of Marks & Marks Solicitors  
For the Respondent: Mr E Tufan, Home Office Presenting Officer

**DETERMINATION AND REASONS**

**Introduction**

1. The Appellant is a male citizen of Pakistan born on 12<sup>th</sup> May 1987. He applied for leave to remain as a Tier 1 (Entrepreneur) Migrant which application was refused for the reasons given in a Notice of Decision dated 14<sup>th</sup> May 2013. The Appellant

appealed, and his appeal was heard by First-tier Tribunal Judge Wright (the Judge) sitting at Hatton Cross on 8<sup>th</sup> October 2013. He decided that the decision of the Respondent was not in accordance with the law and allowed the appeal to that extent. The Respondent sought leave to appeal that decision, and on 10<sup>th</sup> December 2013 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 application for leave to remain was refused because the Appellant failed to score sufficient points under Appendix A: Attributes of HC 395 as regards access to funds; funds held in regulated financial institutions; and funds disposable in the UK. This was because the Appellant had not submitted with his application the required documentary evidence. The Judge dismissed the appeal under the Immigration Rules. That decision has not been challenged in this appeal. However, the Judge found that the Respondent's decision was not in accordance with the law as the Respondent had not operated its Evidential Flexibility Policy in accordance with the decision in **Rodriguez (Flexibility Policy) [2013] UKUT 00042 (IAC)**. In particular, the Judge found that the Respondent should have made enquiries of the Appellant in respect of a defective NSC bank statement.
4. At the hearing, Mr Tufan argued that the Judge had erred in law by a wrong application of the Evidential Flexibility Policy. The Court of Appeal in **Rodriguez and Others v SSHD [2014] EWCA Civ 2**, overturning the Upper Tribunal decision, now established the limitations upon the use of that Policy.
5. In response, Mr Chohan accepted the arguments of Mr Tufan as regards the application of the Court of Appeal decision in **Rodriguez**, but argued that the Respondent should in any event have made further enquiries under the provisions of paragraph 245AA of HC 395.
6. I find that the decision of the Judge to allow the appeal to the extent of finding the decision of the Respondent not to be in accordance with the law to contain an error on a point of law so that it should be set aside. There was consensus at the hearing that the Judge's application of the evidential flexibility policy as interpreted by the Upper Tribunal in **Rodriguez** was in error of law as established by the decision of the Court of Appeal in **Rodriguez**. I proceeded to remake the decision.

### **Remade Decision**

7. It is common ground that the application of the Appellant for leave to remain as a Tier 1 (Entrepreneur) did not meet the various requirements of the Immigration Rules and that in this respect the decision of the Judge was correct. Mr Chohan has argued that it is possible to review the Respondent's decision further by applying the provisions of paragraph 245AA of HC 395. I do not agree with that submission. The deficiencies in the documents submitted by the Appellant are listed in the Notice of

Decision and are such that they are not capable of rectification by any action taken under the provisions of para 245AA. The appeal is therefore dismissed.

**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 dismissing 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 find no reason to do so.

Signed

Date

Upper Tribunal Judge Renton