



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/21380/2013

THE IMMIGRATION ACTS

Heard at Manchester
On 5th March 2014

Determination Promulgated
On 08th April 2014

Before

Upper Tribunal Judge Chalkley

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR RAVI KANTH BEDADI

Respondent

Representation:

For the Appellant:

Mr McVitie, a Home Office Presenting Officer

For the Respondent:

Mr Gary McIndo an Assistant Solicitor with Latitude Law

DETERMINATION AND REASONS

1. In this appeal the Secretary of State for the Home Department is the appellant. To avoid confusion I shall refer to the Secretary of State as “the Secretary of State” and to Ravi Kanth Bedadi as the appellant “the appellant”.

2. The appellant was born on 8th July, 1982 and is a citizen of India. He made application to the Secretary of State for leave to remain as a Tier 1 (Entrepreneur) Migrant under the points-based system and for a biometric residence permit. His application was refused under paragraph 245DD of the Immigration Rules on 20th May, 2013 and the appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Malik heard the appeal in Manchester on 7th October, 2013 and instead of either allowing or refusing the appeal, concluded that the Secretary of State for the Home Department's decision was not in accordance with the law.
3. It was conceded before the First-tier Tribunal Judge that the documents submitted by and on behalf of the appellant did not meet the requirements of the Immigration Rules, but it was asserted that the decision of the Secretary of State was not in accordance with the law, because no reasons have been given why her evidential flexibility powers have not been used, given that paragraph 245AA of the Immigration Rules can take into account new evidence.
4. The judge also found that because the notice of decision contained two decisions, namely a decision to refuse leave and a decision to remove the appellant under Section 47 of the 2006 Act, the decision to remove the appellant could not stand.
5. The Secretary of State challenged the decision on the basis first of a misapplication of paragraph 245AA and evidential flexibility and secondly on a misapplication of the law, given at Section 51 of the Crime and Courts Act 2013 (effective from 8th May, 2013) gives the Secretary of State power to issue removal directions under Section 47 in the same decision as the Notice of Refusal.
6. First-tier Tribunal Judge Pullig granted permission to appeal.
7. In a helpful response under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules, 2008, it was accepted on behalf of the appellant that the Secretary of State's decision made on 20th May, 2013, to make a simultaneous refusal of leave and removal decision, was permitted. In respect of a substantive challenge made by the Secretary of State, the appellant's response asserted that the decision of the Secretary of State was not in accordance with the law.
8. Mr McVitie told me that he relied on the Secretary of State's grounds. For the respondent, Mr McIndo accepted that the documents submitted with the application did not comply with the Rules. But the errors were in the format of the third party letter and ordinarily should have led to a request from the Secretary of State addressed to the respondent for further evidence under Rule 245AA. It was alleged that letters from the State Bank of Hyderabad, State Bank of India and the Department of Posts - India do not contain the full address including the postcode and landline telephone number of Mr Bedadi Ram Mohan. The letter from the Secretary of State also complains that the letter from the State Bank of Hyderabad does not state the appellant's full name or the name of the funds being made

available to him and, therefore, do not meet the criteria specified at paragraph 41-SD(a)(i) of Appendix A of the Immigration Rules.

9. Additionally the third party declaration letter has not been signed by the appellants and the letter from the advocate does not contain Mr Bedadi Ram Mohan's ID document details and does not therefore meet the criteria specified in paragraph 41-SD(b) of Appendix A of the Immigration Rules. Furthermore evidence supplied by the appellant failed to meet the requirements of Appendix A of the Immigration Rules, because it confirms that he only has access to the equivalent of £28,194.80 which is below the £50,000 requirement. The Secretary of State's letter of 20th May, 2013 went on to say

“The decision has been made not to request additional documentation or exceptionally consider the application under the provision of paragraph 245AA as it is not anticipated that addressing the omission or error would lead to a grant of leave”.

10. The Presenting Officer suggested that the format of the documentation was perfectly acceptable, but what is unacceptable was that the contents failed to meet the Rules. Rule 245AA, as it was at the date of the decision, makes it clear that documents will not be requested where a specific document has been submitted or where the Entry Clearance Officer, Immigration Officer or Secretary of State does not anticipate that addressing the initial error referred to will lead to a grant, because the application will be refused for another reason. He suggested that the contents of the documents were wrong in the context of the Immigration Rules format means, for example, if a letter is not on letter headed paper as specified.
11. Responding briefly Mr McIndo suggested that all information apart from the address and telephone number was submitted. I reserved my decision.
12. It was accepted before the First-tier Tribunal Judge that the documents submitted on behalf of the appellant did not meet the requirements of the Immigration Rules. The question before me is, therefore, whether the Secretary of State has erred in law by failing to apply the provisions of paragraph 245AA.
13. The Secretary of State's decision was taken on 20th May, 2013. Between 13th December, 2013 and 30th June, 2013 there were six different versions of the Immigration Rules. According to the version which was applicable at the time which had been published on 1st May, 2013 paragraph 245AA was as follows:-

“245AA. Documents not submitted with applications

- (a) Where Part 6A or any appendices referred to in Part 6A state that specified documents must be provided, the Entry Clearance Officer, Immigration Officer or the Secretary of State will only consider documents that have been submitted with the application, and will only consider documents submitted after the application where they are submitted in accordance with sub-paragraph (b).
- (b) If the applicant has submitted specified documents in which:-

- (i) some of the documents in sequence have been omitted (if for example, one bank statement from a series is missing);
- (ii) a document is in the wrong format (for example, if a letter is not on letterhead paper as specified); or
- (iii) a document is a copy and not an original document; or
- (iv) a document does not contain all the specified information;**

The Entry Clearance Officer, Immigration Officer or the Secretary of State may contact the applicant or his representative in writing and request the correct documents. The requested documents must be received at the address specified in the request within seven working days of the date of the request.

- (c) documents will not be requested where a specified document has not been submitted (for example an English language certificate is missing), or where the Entry Clearance Officer, Immigration Officer or Secretary of State does not anticipate that addressing the omission or error referred to in sub-paragraph (b) will lead to a grant because the application will be refused for other reasons.
- (d) if the applicant has submitted a specified document:-
 - (i) in the wrong format or
 - (ii) which is a copy and not an original document; or
 - (iii) which does not contain all of the specified information but the missing information is verifiable from:-
 - (1) other documents submitted with the application
 - (2) the website of the organisation which issued the document or
 - (3) the website from the appropriate regulatory body.

The application may be granted exceptionally, providing the Entry Clearance Officer, Immigration Officer or the Secretary of State is satisfied that the specified documents are genuine and the applicant meets all the other requirements. The Entry Clearance Officer, Immigration Officer or Secretary of State reserves the right to request the specified original documents in the correct format in all cases where (b) applies and, to refuse applications if these documents are not provided as set out in (b).”

- 14. It is alleged that the letters from the State Bank of Hyderabad, the State Bank of India and the Department of Posts – India are defective because they do not contain Mr Bedadi Ram Mohan’s full address including postcode and landline number. The letter from the State Bank of Hyderabad does not state the appellant’s name or amount of funds being available to him.
- 15. It seems to me that these are documents which fall under paragraph 245AA(b)(iv) because they do not contain all of the specified information. The Secretary of State also complains that the third party declaration letter has not been signed by the appellant and the letter from the attorney does not contain all Mr Bedadi Ram

Mohan's ID document details. Insofar as the letter from the attorney is concerned, this is again something which does not contain all of the specified information and falls within paragraph 245AA(b)(iv). As to the signing of the third party declaration letter, it seemed to me that this was an obvious error which could quite easily have been corrected by the appellant being asked to sign it. I have concluded, therefore, that the decision of the Secretary of State was not in accordance with the law and Immigration Rules. Had she applied the version of paragraph 245AA which was in force at the date of her decision the defects complained of could have been rectified. I do not know why it was specifically decided not to request additional documentation or consider the application under the provisions of paragraph 245AA or why it was not anticipated that addressing the omission or error would lead to a grant of leave. Unfortunately Mr McVitie was unable to assist me.

16. I have concluded that the decision of the Secretary of State was wrong.
17. The First-tier Tribunal Judge said in paragraph 13 of his determination that the decision appealed against was not in accordance with the law. He does not specifically say that he allowed the appeal by the appellant.
18. I am satisfied that the decision of the First-tier Tribunal Judge did contain an error of law. The judge had failed to appreciate that Section 51 of the Crime and Courts Act 2003 gave the Secretary of State for the Home Department the power to issue removal directions under Section 47 at the same time and in the same decision as a Notice of Refusal. To that extent and to that extent only I allow the appeal of the Secretary of State.
19. The Secretary of State's refusal was, for the reasons I have given above, not in accordance with the law.

Summary

20. (1) The decision of the Secretary of State to refuse to vary leave and to remove the appellant under Section 47 of the 2006 Act was in accordance with the law.
- (2) The decision of the Secretary of State not to contact the appellant or his representative in writing and request corrected documents once it became apparent that documents submitted did not contain all the specified information was not in accordance with the law and the decision of the First-tier Tribunal Judge is upheld to that extent.

Upper Tribunal Judge Chalkley