Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/23839/2013
IA/23836/2013

THE IMMIGRATION ACTS

Heard at Piccadilly Exchange	**Determination Promulgated**
On 28 March 2014	**On 27 June 2014**

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE PICKUP

Between

SOHAIL AHMAD
and
FAIZA LATIF

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr G Brown, Counsel instructed by Arshed & Co Solicitors
For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are citizens of Pakistan who appealed to the First-tier Tribunal a decision of the respondent refusing their applications to extend their leave to stay in the United Kingdom as entrepreneurs and also making the decision to remove them.

2. The appeals were heard and dismissed by the First-tier Tribunal in a determination that we find to be very unsatisfactory. Many criticisms were made of the First-tier Tribunal Judge some of which are, we hope, rather extravagant but it is absolutely plain is that the determination was materially wrong in several respects. Of particular significance is that the

First-tier Tribunal Judge used what appears to be a standard paragraph that was wholly appropriate in a case where a person has given evidence with the assistance of an interpreter in the determination of an appeal where evidence was *not* given with the assistance of an interpreter. It is quite impossible to read the determination and be at all confident that the judge's mind was where it ought to have been.

3. We have no hesitation in setting aside the decision of the First-tier Tribunal in its entirety. We make it plain that none of the findings of fact of the First-tier Tribunal are in any way reliable and no weight whatsoever should be given to them. The First-tier Tribunal determination is not merely wrong in some respects. Its findings are completely flawed because we are not satisfied the judge was thinking about the case in front of him.

4. We make it particularly clear that the adverse credibility findings are not to be regarded as reliable. Indeed we do not understand why the judge was getting involved in making credibility findings at all because that does not seem to be what the case was about. Anybody looking at this decision if, for example, the appellants make a further application of any kind should be careful to make quite sure that they give no weight whatsoever to anything that was decided by the First-tier Tribunal in this case.

5. Mr Harrison accepted there were difficulties in the decision and whilst we are not sure that he formally conceded that the decision was wrong he certainly did not raise any arguments that we need to consider in great detail. We set aside the decision that has been made.

6. We then had to decide how best to proceed with the case. Mr Brown made an application that it be decided by First-tier Tribunal but we see no justification for that. If this had been a case where there had been an unfair hearing and there were, for example, detailed findings of fact that needed to be made, we would have seen considerable merit in his position but we did not regard it as that kind of case. This is a case that has to be decided on fairly narrow grounds and is not the sort of case which needs to be decided properly by the First-tier Tribunal in order to be decided fairly.

7. Mr Brown also asked for an adjournment so that better evidence could be produced. In a nutshell it was his case that the appellants and particularly the first appellant, had a very strong sense of grievance because he had been misled by documents produced by the Secretary of State. In particular he thought that imperfections in the application could be corrected at the invitation of the Secretary of State. He may well have thought that but that is not relevant to us unless he thought it for a good reason. If he had wanted to support his case with documents they should have been available to the First-tier Tribunal. It seems they were not. However we made enquiries at the hearing to see if we could find the documents that he thought would be helpful. We made some progress in that we found similar documents that indicated what had changed. We found nothing that gave us any reason to think that further enquiries

would have revealed documents that would have provided the assistance the appellants need.

8. It follows therefore that although we understood the reasoning behind the application it was not only made very late in the day it was made in circumstances where we had no reason to think it had any inherent merit. We refused it and decided to continue with the appeal. It is for the appellant's to prove on the balance of probability that they satisfied that requirements of the rules.

9. There is not very much that could be said. For all its deficiencies it does seem to us that the First-tier Tribunal did do a reasonable job in summarising the respondent's case. It was when the appellants' case was considered that it fell into error.

10. The respondent's case on funding is summarised in paragraph 6 of the First-tier Tribunal Judge's determination where it explains that the respondent was not satisfied with the evidence from the United Bank and the Bank Alfalah Ltd because it did not comply with the Rules concerning confirmation that information was from the appropriate regulatory body. Neither did the third party declaration contain the necessary signatures to show the funds were available from the third party funders. Neither was the letter from the legal representatives satisfactory because it did not show the authority or registration of the writer enabling them to practice in Pakistan. Further, a copy of a bank statement was deficient because it was an internet printout without the necessary confirmatory signatures.

11. It is very important to understand that there has been a change in the Immigration Rules coinciding with the onset of the points-based system. In many cases the focus of the Rules has drifted away from deciding if, for example, a person can be maintained but focuses instead on whether certain criteria, sometimes of a rather arbitrary kind, have been met. If they are met an application succeeds and if they are not met the application fails. This does not have to be justified but it is clearly intended to simplify decision-making and although it is plainly arbitrary it is unlikely that a person who comes within the purpose of the Rules cannot meet the requirements if they go about their business in a proper way.

12. For the reasons given these appellants did not meet the requirements of the Rules and the application had to be refused.

13. Mr Brown was not able to draw anything to our attention to suggest these findings are in any way wrong. Indeed it was not his case that the applications ought to have been allowed because the Rules were met; it was his case that the deficiencies were correctable. He said little to support that submission and we cannot agree with him.

14. We are aware of various policies adopted by the Secretary of State at various times but these are easy to misunderstand. It is probably better to think of them not as a means of extending the Rules but as a means of the Secretary of State lawfully allowing applications that would otherwise fail under the strict criteria she set out in the Rules. They are to give the Secretary of State flexibility where she wants to exercise it. Her discretion

is not unfettered and there are occasions when the policy statement requires certain things to be done but the policy statements are usually hedged in rather general terms. We have been shown nothing which imposed an obligation on the Secretary of State to send the matters back for further consideration or to make enquiries about documents that are in any way deficient.

15. We were asked particularly to wait for an additional document to be produced today which we are told was a letter from the Secretary of State acknowledging the receipt of the application and saying, at least in the mind of the first appellant, that the Secretary of State would ask if anything needed to be corrected. We did not wait for this document because we do not see how it could possibly be relevant. A document sent in acknowledgement of the application could not have any bearing at all on what was sent with the application and so could not have been material to the applicants' decision about how they presented their cases.

16. We emphasise this because we understand that the appellants have a very strong sense of grievance. They say, and we make no findings about this, that they are serious business people who want to trade in the United Kingdom and they thought they had made an application that could have been corrected but we are told later that it could not.

17. Following the decision of the Court of Appeal in **Rodriguez [2014] EWCA Civ 2** we no purpose in rehearsing how the evidential flexibility rules were once interpreted. Nothing said to us today showed that this is a case that ought to have been allowed for reasons of evidential flexibility or fairness or similar administrative law concepts.

18. It is therefore clear we must dismiss the appeal under the Rules.

19. Both appellants raised human rights grounds in their original application. To the extent that a burden and standard of proof are relevant in human rights claims it is for the appellant to prove the fact relied upon and the respondent to justify any interference in the private and family lives of the appellants.

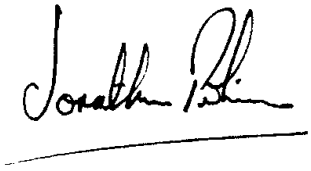
20. The appellants supported their claims in the most general terms. They have been lawfully in the United Kingdom now for some time but neither of them claims that they have developed the very strong and special relationships that carry a lot of weight when a person's private and family life is considered. This case is not presented for example, on the basis that returning them to Pakistan would split up a family or deprive a child of contact with a parent. These are not the only things that can lead to an appeal being allowed on human rights grounds but nothing of comparable importance is alleged and we see no reason whatsoever under the Rules, or at all, why the disruption to a private life established during a period of lawful residence in the United Kingdom would be a disproportionate interference when the proper purpose of enforcing immigration control is preserved.

21. It follows therefore that we have to say as a matter of law that these appeals must be dismissed.

22. We do however wish to make it plain that it has been explained to us the appellants are minded to make a further application. Nothing we have done today is intended to discourage them from doing that or to frustrate it in any way. As we have said before, but will emphasise again, the previous findings of the First-tier Tribunal do not assist and nothing we have said today is intended to indicate that any further application should or should not succeed.

Decision

We set aside the decision of the First-tier Tribunal and we substitute a decision dismissing the appellants' appeals.

Signed
Jonathan Perkins
Judge of the Upper Tribunal  Dated 25 June 2014