



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/26566/2013
IA/26569/2013

THE IMMIGRATION ACTS

Heard at Field House
On 11th March 2014

Determination Promulgated
On 12th March 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR SYED IFTIKHAR AHMED
MRS TAHIRA AHMED

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Iqbal (instructed by Pride Solicitors)
For the Respondent: Mr P Nath (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellants appeal to the Upper Tribunal against a decision of the First-tier Tribunal (Judge Brenells) by which, in a determination promulgated on 17th January

2014, he dismissed the Appellants' appeals against the Secretary of State's decisions to refuse them leave to remain as a Tier 1 (General) Migrant and his dependant spouse.

2. The application was refused solely on the basis of the first Appellant's previous earnings. The Secretary of State noted in the refusal that he had claimed points for earnings of £67,372; that appendix A of the Immigration Rules required applicants to provide at least two different types of supporting evidence of each source of earnings, each piece of evidence from a different source. The refusal notes that the Appellants had provided an Accountant's letter and accounts but that these derived from the same source and as such were not acceptable.
3. That was the only reason for the refusal.
4. Before the First-tier Tribunal the Appellants were represented, as now, by Mr Iqbal. The Judge dismissed the appeal on the basis that evidence put before him amounted to post decision evidence and could not be taken into account.
5. Permission to appeal was sought and granted by a Judge of the First-tier Tribunal who thought it arguable that First-tier Tribunal had made a material error of law in that the Judge had not taken into account HSBC business bank account statements which the Appellant indicated were submitted with his application and which were included in the Respondent's bundle.
6. Before me Mr Nath helpfully acknowledged that no issue was taken with the Accounts in the refusal by the Secretary of State. He also acknowledged that the Accounts and the bank statements were from different sources. He also helpfully confirmed that the bank statements taken together with the Accounts would satisfy the requirements of the rules.
7. That left only the issue of whether the bank statements were submitted to the Secretary of State with the application. It is true that there is no reference to them in the decision. However, I was referred to the application form submitted to the Secretary of State by the Appellants (in the Respondent's bundle) and in particular to Page 36 wherein is listed the evidence submitted with the application. Next to "Previous Earning" it lists wage slips, bank statements business accounts and dividend voucher. I am therefore prepared to accept, based on the contents of the application form and also the fact that the relevant bank statements are included in the Respondent's bundle, that the Appellant did submit the appropriate evidence with the application and it was overlooked by the Secretary of State.
8. In failing to take those bank statements into account the First-tier Tribunal made a material error of law and I set aside the determination.

9. I remake the decision and on the basis of the evidence contained in the Respondent's bundle I am satisfied that the bank statements were submitted with the application and accordingly the Appellants ought to have succeeded. They met the requirements of the Rules. Their appeals are therefore allowed under the Immigration Rules.

Signed

Date 11th March 2014

Upper Tribunal Judge Martin

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeals and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid for the following reason:- It is plain from my findings above that the Appellants ought to have succeeded on the basis of their applications and evidence submitted to the Secretary of State. Had the Secretary of State taken all of the evidence into account there would have been no necessity for an appeal.