



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/30199/2013
IA/30186/2013

THE IMMIGRATION ACTS

Heard at Field House
On 15th August 2014

Determination Promulgated
On 18th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

MRS JEEWANTHI MANIK KODITHUWAKKU KANKANAMGE
A S GARDI HEWAWASAM THUDUWAGE
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Kannangara Counsel, instructed by Law Direct Immigration
For the Respondent: Mr Jarvis, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants, Mrs Jeewanthi Manik Kodithuwankku Kankanamge, date of birth 27 October 1979 referred to as the first appellant, and A S Gardi Hewawasam Thuduwege date of birth 14th of May 1978, referred to as the second appellant, are citizens of Sri Lanka.

2. It is not necessary to make an anonymity direction.
3. These are appeals by the appellants against the determination of First-tier Tribunal Judge Kelsey promulgated on 4th April 2014. The judge dismissed the appeals of the appellants against the decisions of the respondent dated 28th June 2013. The respondent had refused to vary the appellants' leave to remain in the United Kingdom and had decided to remove the appellants from the United Kingdom.
4. The first appellant had applied for further leave to remain as a Tier 1 (Entrepreneur) under the Point Based System under paragraph 245DD. The second appellant's application is as a dependant spouse of the first appellant.
5. Before me it was conceded by the respondent that there is an error of law in the original determination, albeit through no fault of the judge. The respondent also concedes that the decision is not in accordance with the law and that accordingly there is an application before the respondent that requires a lawful decision.
6. For points to be awarded for access to funds under the Tier 1 entrepreneur route, the first appellant had to produce the documentation in accordance with Appendix A paragraph 41 and 41- SD. Amongst the provision was a provision relating to evidence required in respect of an application where the funds are to be provided by third parties (41-SD paragraph (b)(ii)).
7. It was the appellants' case that they met the requirements for points as they had access to funds of at least £200,000. The funds were to be provided by third parties, as identified in the refusal letter of 28 June 2013.
8. The requirements of the rules under appendix A paragraph 41-SD sub paragraph (b) required that there had to be a letter from a legal representative and that the letter had to have the information specified in 41-SD (b) (ii).
9. As identified in the refusal letter of 28 June 2013 the letter from the legal representative submitted with the application did not have the required information and therefore did not meet the requirements of the rules. The letter of refusal specifically identifies the defects in the letter from the legal representative. It appears to be accepted that the letter from the legal representatives did not have the required information.
10. The judge in making his decision applied the provisions as set out.
11. The respondent's representative conceded that there is a policy applicable to applications as Tier 1 (Entrepreneurs). The policy reference V.2.0. [valid 20th May 2013 to 1st October 2013) provided that in respect of Tier 1 Entrepreneurs where required information on the letters and documents was missing, the caseworker "may" write requiring the additional information.
12. It is conceded that the caseworker should have written requesting further information and by reason thereof the decision is not in accordance with the law.

13. Through no fault of the judge there is an error of law in the determination. The decision to dismiss these appeals is set aside and I substitute the following decision:

The appeals are allowed to the extent that there are applications before the respondent which require lawful decisions.

In the circumstances I make no fee award.

Signed

Date

Deputy Upper Tribunal Judge McClure