Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/32659/2013
IA/32691/2013
IA/32692/2013
IA/32693/2013

THE IMMIGRATION ACTS

Delivered Orally at Field House
On 25 April 2014

Determination Promulgated
On 28 May 2014
…………………………………

Before

UPPER TRIBUNAL JUDGE GOLDSTEIN

Between

ALI REHMAN
RAJA SULTAN NAWAZ
SHEHAR BANO
HASAN SULTAN NAWAZ

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr S Muquit, Counsel
For the Respondent: Mr G Saunders, Senior Home Office Presenting Officer

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DETERMINATION AND REASONS

1. This is an appeal by the Appellants, citizens of Pakistan. The first two named Appellants, Mr Nawaz and Mr Rehman (for the purpose of this determination "the Appellants") were respectively born on 19 January 1981 and 30 August 1982. They made a combined application for leave to remain in the United Kingdom as Tier 1 (Entrepreneur) Migrants under the Points Based System and on 18 July 2013 their applications were refused and directions made for their removal under Section 47 of the Immigration, Asylum Nationality Act 2006. The third and fourth named Appellants are respectively the wife and infant son of Mr Nawaz so in effect their status in the United Kingdom is dependent on the outcome of his appeal.

2. The applicants' applications were refused because the Respondent was not satisfied that they met the requirements of paragraph 245DD of the Immigration Rules and more particularly sub-paragraphs (b), (h), (i) and (k).

3. In summary the Respondent was not satisfied on the balance of probabilities that:

   - 245DD(h) - the Appellants genuinely intended to invest the money referred to in Table 4 of Appendix A in their business and that it was genuinely available to them and would remain available to them until such time as spent on the business;

   - 245DD(i) - in reaching that decision the Respondent had taken account of the evidence that the applicants had submitted; the viability and credibility of the source of the money referred to in Table 4 of Appendix A; the viability and credibility of the Appellants' business plans etc; their previous education and business experience, and; their immigration history and previous activity in the UK.

4. I pause there, because at the outset of the hearing before me on 25 April 2014, Mr Saunders for the Respondent most helpfully informed me as follows:

   > "I have looked at the renewed grounds and I make no concessions on the law, but I do say in respect of ground (iii) that if your file were to reveal the existence of evidence in respect of the realism of the Appellants' business proposals and that evidence is not reflected in the First-tier Tribunal's determination, that it may be that the correct method of disposal would be to give this matter another hearing before the First-tier Tribunal."

5. In light of Mr Saunders' indication, I in fact checked all four of the relevant files but regrettably could not find in any of them, the First-tier Judge's Record of Proceedings in order to investigate the matter.

6. However Mr Muquit for the Appellants was known to this Tribunal and to the Secretary of State as a respected Counsel and he confirmed that he had drafted the

renewed grounds and it is apparent from ground (iii) that it was contended that the First-tier Judge did not take account of material evidence and had otherwise misdirected himself on the evidence presented and the requirements of the Rules insofar as they applied to the Appellants when dismissing their appeal. It was also claimed that:

> "Judge Edwards ignored factors set out in the Immigration Rules themselves as evidence of genuine intention such as the Appellants' immigration history and educational background; whilst also ignoring other considerations as set out in the grounds such as the existence of a business plan, the fact that A's family were involved in the same business,(The Appellants) proposed to invest in the UK; **and had in fact answered all questions that were put to them as to their proposed business at the hearing, including questions such as how they would be breaking the cars, how they would separate the various oils and gases and parts, what licences were required and how they were to be obtained. (These) were all explained during the hearing which they could not have done without researching the area"** [Emphasis added].

7. Mr Saunders most fairly informed me and I agreed, that in that Mr Muquit had represented the Appellants at the hearing before the First-tier Tribunal and as a respected Counsel, there was no reason to doubt the veracity of that claim as emphasised above.

8. In the light of that concession there is really no need for me to go into other aspects of the Respondent's decision that led to the refusal of the Appellants' applications.

9. It is however important for the sake of completeness to add, that at the hearing before me, (which of course was for the purposes of my deciding whether or not the determination of the First-tier Judge disclosed an error or errors on a point of law such as may have materially affected the outcome of the appeal) I drew to Mr Saunders' attention, paragraphs 3 and 4 of Ground 1 of the original grounds in support of the first application for permission to appeal that Mr Saunders regrettably did not have before him. It would be as well for the sake of completeness to set out the relevant passage from those paragraphs concerning this appeal:

> "3. The FtT erred in rejecting A's claims as to the availability of the funds required for investment.
>
> 4. The FtJ states that the provenance of the funds and their availability was not established 'to my satisfaction'. Leaving aside the fact that the FtJ gives no reasons for his own lack of satisfaction, such an approach was in any event unlawful."

10. Paragraph 4 of ground 1 then goes on to emphasise the basis of that contention.

11. The point is, that when one looks at the First-tier Judge's determination, what is striking, is that whilst to the First-tier Judge's credit, he comprehensively set out the relevant Immigration Rules applicable to this case including the display of relevant

Tables, that under the sub-heading "Evidence" there were but two brief paragraphs in summary. Similarly, under the sub-heading "Submissions", there were two even briefer paragraphs in summary. Under the sub-heading "Conclusions" there were four brief paragraphs, the first of which recorded the onus and standard of proof required in these cases.

12. At paragraph 20 the First-tier Judge had this to say:

> "The provenance of the £200,000 said to be held by Mr Hamid in Pakistan is still not entirely clear to me. It is said to be 'in the business' done by the family in that country. It has not been established to my satisfaction that this is, in fact, spare cash awaiting investment. "

With great respect to the First-tier Judge and as agreed between myself and both parties' representatives, this was an inadequate reason for reaching a conclusion as to the provenance of the funds, that was a matter that was central and therefore obviously highly material to the outcome of this appeal.

13. Matters of concern do not end there because at paragraph 21 of his determination the First-tier Judge continued as follows:

> "21. The business plans of Mr Rehman and Mr Nawaz are also unsatisfactory. Apart from looking at a few premises in the London area, they appear to have done very little to establish the business, by setting up a limited company, by obtaining the necessary waste management consents and, if necessary, planning permission, even on an informal basis from the local planning authority, obtaining quotes for equipment, and the hiring of staff. I do not accept the assurance I was given that such staff are readily available from a Job Centre. In my judgment, this will all take far longer than six months."

14. In that regard, I would refer to paragraph (ii) of the renewed grounds, with which I concur, that stated as follows:

> "In any event, it is a fact that (as contended in Ground 2, paragraph 6 to 12) Judge Edwards did not take account of material evidence and otherwise misdirected himself on the evidence presented and the requirements of the rules so far as they applied to (the Appellants) when dismissing their appeal. Contrary to the premises relied upon by Judge Edwards (a) (the Appellants) were not required to establish the business they proposed to invest in and (b) did not simply look at a few premises in manifesting their intention to invest in their proposed business and (c) could not in fact do what Judge Edwards apparently expected to do (and Judge Edwards himself was not sure that they could either). This is a very important consideration. They could not enter into any contracts, obtain any premises, register a company or obtain any licences without breaching their existing visa conditions."

15. Further, the Judge's apparent finding that staff would not be "readily available from a Job Centre" and that in any event, this would "all take far longer than six months" was not a matter based on evidence but purely on speculation.

16. The Appellants' renewed application for permission to appeal, was successful when Upper Tribunal Judge Kopieczek considered it arguable that the First-tier Judge erred in concluding that the Appellants did not meet the relevant requirements of the Immigration Rules in terms of the availability and use of funds and in relation to the proposed business. In consequence the UTJ concluded that there was arguable merit in the grounds "as to the Judge's consideration of the Rules and his assessment of the evidence".

17. Prior to the hearing before me and in a letter dated 9 April 2014 the Tribunal received the Respondent's Rule 24 response but in light of Mr Saunders' most helpful and in my view realistic concession, there is no need for me to refer to that matter further. It is in any event right to say that the Rule 24 response letter, accepted that in respect of other matters stated in the grounds of challenge that were said not to have been considered by the Judge, the Secretary of State did not have a Record of Proceedings and could not assess those grounds.

18. I have to say, that having carefully read the First-tier Judge's determination, that in common with the parties, I have been struck by the paucity of information as to the evidence given and the submissions made by the parties' respective representatives.

19. For the above reasons, I am satisfied that not only were brief explanations given by the First-tier Judge for his conclusions on the central issue on which this appeal was determined but they were inadequately reasoned. This is not a case where upon a reading of the determination as a whole, the Tribunal can readily understand the thought processes that the Judge employed in reaching his decision (see R (Iran) [2005] EWCA Civ 982)

20. Whilst brevity has its place in the writing of determinations, it cannot be at the expense of clear and adequate reasoning and regrettably I have concluded that such was the case in terms of the First-tier Judge's determination in the present case.

21. For the above reasons, there is no need for me to move on to consider the merits or otherwise of other aspects of the grounds challenging the First-tier Judge's determination. In view of the errors of law that have been established, it follows that the First-tier Judge's determination cannot stand and must be set aside.

22. The parties have agreed with me that in consequence of my findings, it follows that there has been no satisfactory hearing of the substance of this appeal at all.

23. The scheme of the Tribunals, Courts and Enforcement Act 2007 does not assign the function of primary fact-finding to the Upper Tribunal. In such circumstances Section 12(2) of the TCE 2007 requires us to remit the case to the First-tier or re-make

it ourselves. For the reasons I have given above, and with the agreement of the parties, I have concluded that the decision should be remitted to a First-tier Tribunal Judge other than First-tier Tribunal Judge J D L Edwards to determine the appeal afresh, with all issues at large, at Taylor House.

24. For this purpose a hearing has been arranged for 31 July 2014.

25. I am satisfied that there are highly compelling factors, falling within paragraph 7.2(b) of the Senior President's Practice Statement that the decision should not be re-made by the Upper Tribunal. It is clearly in the interests of justice that the appeal of the Appellants be heard afresh in the First-tier Tribunal.

26. For this purpose the hearing of the appeal at Taylor House on 31 July 2014 for a substantive hearing will have a time estimate of three hours. I am given to understand that the first two named Appellants, Mr Rehman and Mr Nawaz will be giving oral evidence for that purpose and will not require the services of an interpreter.

Decision

27. The First-tier Tribunal erred in law such that their decision in the present appeal should be set aside. I remit the re-making of the appeal to the First-tier Tribunal at Taylor House, to be heard before a First-tier Tribunal Judge other than First-tier Tribunal Judge J D L Edwards.

28. No anonymity direction has been made.

Signed Date 23 May 2014

Upper Tribunal Judge Goldstein