



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: IA/34342/2013
IA/34348/2013

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke-on-Trent
On 17th July 2014**

**Determination
Promulgated
On 24th July 2014**

Before

The President, The Hon. Mr Justice McCloskey

Between

SADIK MOHAMMED AND NIKHATH SULTANA MOHAMMED

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellants: Mr Findlay.
Respondent: Mr McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. By a decision made on behalf of the Secretary of State for the Home Department (hereinafter the "*Secretary of State*") dated 07 August 2013, the application of the first-named Appellant for leave to remain as a Tier 1

Entrepreneur was refused. By a kindred decision of the same date, the application of the second-named Appellant, the first Appellant's spouse, for leave to remain as the dependent of a person having the status sought by her husband was also refused. The ensuing appeal to the First-tier Tribunal (the "FtT") was dismissed.

2. Upon the hearing of this appeal, the grounds crystallised to two issues:
 - (a) The "SOC Code" issue; and
 - (b) The "contracts" issue.

Each of these was probed at some length in submissions from the parties' respective representatives and in exchanges with the bench. As the hearing progressed, Mr McVeety, properly and realistically, conceded the first issue. It fell to the Tribunal to adjudicate on the second issue, therefore.

3. At the conclusion of the hearing, I provided a short *ex tempore* judgment, allowing the appeal, which I now summarise. Ultimately, the question was fundamentally the factual one of whether the contract documents concerned – which were an obligatory requirement under Appendix A, paragraph 41 SD(c)(iii)(4)(iii) – had been included with the first Appellant's application. I decided this factual issue on the balance of probabilities, with the assistance of the documentary sources which were available, in particular Section 7 of the Application Form and the evidence of Mr Findlay who, as the Appellants' lawyer, compiled and submitted the application. I also took into account the obvious doubts and uncertainties, fully acknowledged by Mr McVeety, relating to the state of the Respondent's documentary records. I accepted Mr Findlay's evidence that, in the particular context, the terminology "*supplier invoice*" in the Application Form denoted "*contract*". Being satisfied on this issue on the balance of probabilities, I made a finding that the requisite contractual materials had indeed been included with the application. Thus the application was compliant with the Rules.

DECISION

4. It follows that the determination of the FtT must be set aside.
5. The parties agreed with my suggestion that I should proceed to remake the decision without more. No further submissions were made. It flows inexorably from the analysis and finding above that the appeal should be allowed and I so order.

Bernard McCloskey

THE HON. MR JUSTICE MCCLOSKEY

UPPER TRIBUNAL

PRESIDENT OF THE
IMMIGRATION AND ASYLUM CHAMBER
Date: 17 July 2014