IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/35458/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 22nd October 2014	**On 30th October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

YASIR MAHMOOD

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Muquit, Counsel instructed by Farani Javid Taylor Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan who made a combined application for leave to remain as a Tier 1 (Entrepreneur) Migrant under the points-based system and for a biometric residence permit on 13th July 2013. His application was refused and a

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subsequent appeal dismissed by First-tier Tribunal Judge Burns in a determination promulgated on 14th August 2014. As the judge put it in paragraph 20, "the most fundamental point was the failure to provide audited accounts".

2. Grounds of application were lodged. The first ground was that the Appellant's evidence was that the accounts were due for March 2015, not 2014, and that the judge had misrecorded the evidence. Furthermore, for the judge to say that the Appellant had not asked his accountant to provide unaudited accounts for today's proceedings was an error as the Appellant would not have been entitled to adduce such evidence before the Tribunal by virtue of Section 85A of the NIAA 2002.

3. The second ground was that there had been an erroneous construction of Rule 46-AD in that accounts must only be required to be produced if they reasonably can be said to exist. It was said that the judge erred in reading the provisions as requiring otherwise. The third and final ground was that the judge failed to take into account evidence of the invested funds which were not reproduced within the Respondent's bundle but were a letter from his accountant and a balance sheet as mentioned in the refusal letter. The Respondent was therefore well aware that the funds had been invested and should have waived the formal requirements for audited accounts. What the judge should have done was to make a finding on whether the substance of that provision was satisfied, namely that the company was in fact trading and that the investment had been made or alternatively there were minor issues which clearly fell under the terms of paragraph 245AA of the Rules.

4. A Rule 24 notice was lodged saying it was possible to produce accounts for a period of less than one year and it was unlikely the Appellant would have claimed to be awaiting accounts that were not to be produced until March 2015. It was in the interest of all parties that consistent immigration control was maintained and, in general, the grounds were a disagreement with findings that were open to the judge on the evidence presented to him.

5. Before me Mr Muquit appeared for the Appellant and relied on his skeleton argument. The judge had noted the date incorrectly saying that the accounts were due to be filed on 12th March 2014 (i.e. nine months after the application). This was not a lawful basis to consider that the Appellant had not complied with the requirements of the Rules as to specified evidence. The reason was because the audited accounts required to be submitted in accordance with paragraph 46-SD(a)(i) of Appendix A are the very same audited accounts that are required to be produced in accordance with obligations to do so as a company under company law. There was no requirement to produce any other audited accounts as part of the entrepreneurial visa application. In this context it was to be noted that 46-SD(a)(i) refers to "*the*" audited accounts that a company is obliged to produce that must be submitted not "any" or "a set of" audited accounts as suggested in the Rule 24 notice.

6. As the judge himself had accepted, it would have been unsatisfactory for the Respondent not to exercise discretion to cure what were minor deficiencies in the contracts submitted.

7. In terms of Ground 3, it was to be noted that the application did produce his business bank statements showing deposits by the Appellant to the tune of £54,200 as well as transactions reflecting the purchase of goods/services necessary to establish the business.

8. In all the circumstances I was asked to set aside the judge's decision and allow the appeal outright.

9. Mr Whitwell relied on this Rule 24 notice. He submitted that if there was an error in law the matter should be reconsidered by the Secretary of State.

Conclusions

10. I am satisfied that the judge erred in law and that it is necessary to set the decision aside. As said above, the reason the appeal was dismissed was because of the failure to provide audited accounts. In the circumstances where the company had only just begun trading it was not feasible to expect audited accounts to be produced when they were not required under company law to be lodged until March 2015. It was therefore unsound and an error of law by the judge to dismiss the appeal on this basis and it is therefore necessary to set the decision aside and make a fresh decision.

11. While Mr Muquit's skeleton argument urges me to allow the appeal outright that seems to me to be premature given what is said in Ground 3 of the application, namely that there were a number of very significant documents lodged which the judge failed to deal with and which the Secretary of State needs an opportunity to consider, particularly given that the Appellant is not in a position to provide the audited accounts. I therefore agree with Mr Whitwell that the appropriate conclusion, given the finding that there is an error of law, is for the Secretary of State to reconsider the Appellant's application.

Decision

12. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

13. I set aside the decision.

14. I re-make the decision in the appeal by requiring the Secretary of State to reconsider the application.

Signed Date: **30th October 2014**

Deputy Upper Tribunal Judge J G Macdonald