



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

Appeal Number: IA/37361/2013

THE IMMIGRATION ACTS

Heard at Field House

On 12 June 2014

Determination

Promulgated

On 27 June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

MR MADAWALA MADAWALA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Macdonald, Counsel instructed by Pinidiya Solicitors

For the Respondent: Mr S Kandola, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a citizen of Sri Lanka and his date of birth is 19 April 1981.
2. On 18 July 2013 the appellant made an application for leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant. The application was refused by the Secretary of State in a decision of 3 September 2013.
3. The refusal was on the basis that the appellant did not submit a Companies House current appointment register or any other advertising material for his company. The appellant also did not submit accounts.

4. The appellant appealed against the decision of the respondent and his appeal was dismissed by Judge of the First-tier Tribunal (hereinafter “the FtT”) Miles in a determination that was promulgated on 14 March 2014 following a hearing at Hatton Cross on 4 March 2014. The appellant applied for leave to appeal against the decision of the FtT and permission was granted by Judge of the First-tier Tribunal Nicholson in a decision of 23 April 2014. Thus the matter came before me.
5. The FtT dismissed the appellant’s appeal under the Immigration Rules and under Article 8. It came to light at the hearing before me that the FtT did not have before it a complete respondent’s bundle. The appellant had submitted a substantial amount of documentation with his application (with a covering letter of 17 July 2013).
6. Mr Macdonald argued that it was a material error because there is a likelihood that had the Judge had before him a complete respondent’s bundle containing all the evidence that the appellant submitted with his application, he would have reached a different conclusion in relation to whether or not the appellant met the requirements of the Rules and in relation to article 8. I considered this submission in the context of [9] and [10] of the appellant’s witness statement before the FtT. The appellant conceded that he had not submitted certain documents with his application. However, on balance, I accept that there is a possibility that had the Judge would have reached a different conclusion had he had a complete bundle. I note that the appellant argued before the FtT that he met the requirement of the rules.
7. In the circumstances the error of law is material and I remit the case to the First-tier Tribunal pursuant to paragraph 7.2 of the Senior President’s Practise Statement of 25 September 2012. The matter will be heard afresh. I make the following directions:
 - (1) The respondent is to file and serve a complete bundle containing all those documents that were submitted by the appellant with his application.
 - (2) The appellant is to serve and file an indexed and paginated appellant’s bundle.
 - (3) The appellant is to prepare a skeleton argument making his case clear. It is to be made clear to the Tribunal what documents the appellant states were submitted with his application and how he would succeed under the Immigration Rules on the basis of that documentation.
 - (4) Both parties are to attend the next hearing with the relevant Rules in force at the date of the decision and any relevant guidance.
 - (5) The matter is listed at Hatton Cross on 26 November 2014.

Signed Joanna McWilliam

Deputy Upper Tribunal Judge McWilliam