



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/37496/2013  
IA/37500/2013  
IA/37452/2013  
IA/37463/2013

THE IMMIGRATION ACTS

Heard at Field House  
On July 30, 2014

Determination Promulgated  
On August 4, 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

MRS MANPREET KAUR  
MR JASPREET SINGH KHERI  
MRS MANPREET KAUR  
MR ONKAR SINGH

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Qureshi, Counsel, instructed by 12  
Bridge Solicitors  
For the Respondent: Mr Tufan (Home Office Presenting  
Officer)

DETERMINATION AND REASONS

1. The appellants, born September 26, 1983, July 21, 1980, September 3, 1984 and April 20, 1980 respectively, are citizens of India. The first and second appellants are husband and wife as are the third and fourth appellants.

2. The second and fourth appellants have applied to remain in the United Kingdom as tier 1 (Entrepreneur) Migrants under the points based system. The first and third appellants are their dependants.
3. Their immigration history is as follows:
  - a. The second appellant entered the United Kingdom as a Tier 4 (General) Student on September 14, 2009 with leave to remain as a student until March 31, 2011. He switched to tier 1 (Post Study) Migrant status on March 4, 2011 and he was given leave to remain on that basis until March 4, 2013. On January 23, 2013 he applied vary his leave to remain as a Tier 1 (Entrepreneur) migrant but the respondent refused this on September 13, 2013 and at the same time issued a decision to remove him by way of directions pursuant to Section 47 of the Immigration, Asylum and nationality Act 2006.
  - b. The first appellant had been granted leave to enter as a Tier 1 (Post study) partner from October 16, 2011 until March 4, 2013. She was a dependant on his current application.
  - c. The fourth appellant entered the United Kingdom as a student on June 11, 2008 with leave to remain as a student until December 4, 2008. He was granted further leave to remain as a student and Tier 4 (General) student until April 17, 2011. He switched to tier 1 (Post Study) Migrant status on March 8, 2011 and he was given leave to remain on that basis until March 8, 2013. On January 24, 2013 he applied vary his leave to remain as a Tier 1 (Entrepreneur) migrant but the respondent refused this on September 13, 2013 and at the same time issued a decision to remove him by way of directions pursuant to Section 47 of the Immigration, Asylum and nationality Act 2006.
  - d. The third appellant had been granted leave to enter as a student dependant on March 18, 2010 valid until July 31, 2010. She was then granted leave in line with her husband.
4. The respondent refused the substantive applications because she was not satisfied-
  - a. The second and fourth appellants genuinely intended and were able to establish, take over or become a director of one or more businesses within the next six months; or

- b. The second and fourth appellants had genuinely established, taken over or become a director of one or more businesses in the United Kingdom and continue to operate that business.
  - c. The second and fourth appellants genuinely intended to invest the money referred to in Table 4 of Appendix in the business.
  - d. The money referred to in Table was genuinely available to them until such time as the money was spent by the business.
  - e. They did not intend to take employment other than under the terms of paragraph 245DE HC 395.
  - f. The application was refused under paragraph 245DD(h) having regard to the evidence submitted.
5. On September 27, 2013 the appellants appealed under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.
6. The matter was listed before Judge of the First-tier Tribunal Britton (hereinafter referred to as "the FtTJ") on March 7, 2014 and in a determination promulgated on March 27, 2014 he dismissed the appeals under the Immigration Rules and human rights.
7. The appellants appealed that decision on April 2, 2014. Permission to appeal was granted by Judge of the First-tier Tribunal White on April 14, 2014 who found it was arguable the FtTJ had erred by failing to take into account and/or failing to make adequate findings in regard to the evidence submitted by the appellants.
8. The second and fourth appellants were in attendance and the representatives outlined their submissions for me. Miss Qureshi confirmed that she did not intend to make any submissions on any possible error under article 8 and her submissions would be confined to whether the FtTJ had erred in finding the appellants were not genuine entrepreneurs.

#### **SUBMISSIONS ON ERROR OF LAW**

9. Miss Qureshi submitted:
  - a. The FtTJ's findings were inadequate and were confined to 7 lines in paragraphs [38] and [39] of the determination n. These findings were insufficient in light of the fact there had been over 394 pages of evidence submitted.

- b. The FtTJ only had regard to the fact they had other jobs at the date of their application and failed to take into account their evidence that they would devote 100% of their energies to the business once their visas were granted.
  - c. The FtTJ failed to have regard to the fact the business made a £40,000 profit in the first year and he wrongly assumed the appellants were working full-time when in fact one appellant only work three days a week (30 hours) and the worked 30 hours a week.
  - d. The FtTJ's assessment of the evidence was deficient.
10. Mr Tufan relied on the rule 24 letter dated May 21, 2014 and submitted there was no error in law. He submitted the FtTJ agreed with the respondent that they were not genuine entrepreneurs. He gave adequate reasons in paragraphs [38] and [39] and whilst they were brief there was no reason for the FtTJ to have to give lengthy reasons. His findings were not irrational. The FtTJ had to be satisfied that the appellants intended to comply with the Rules and on the balance of probabilities he was not satisfied.
11. I reserved my decision having clarified that the genuineness of the appellant's intentions to the business was the only issue.

#### **ERROR OF LAW ASSESSMENT**

12. The FtTJ had a considerable amount of paperwork before him and the main challenge to this decision is that he failed to make findings or have regard to that evidence when making his findings in paragraphs [37] to [39] of his determination.
13. In assessing whether any error has been made I find it helpful to set out those paragraphs because they were his findings and it explains why he reached the decision he did.

"37. I have taken into account all the evidence before me. The appellants have produced a very impressive Indo Corner Business Plan. They say that they sat down together and prepared the plan and were able to look at other plans and to incorporate some of those ideas into their own plan. They were in school together and both came to this country to study. They have formed this company, which was incorporated in October 2012. The company has the HSBC bank account. The appellants state that they have four contracts, one in Spain. They say the wholesaler and retailer they had met at a party.

38. The respondent states simply that this is not a genuine entrepreneurial business but a business to enable them to stay in this country. They conduct business from their home. The landlord has no objection and they are able to cut costs that way. They both work full time, one for Sports Direct and the other for McDonalds. Being full-time does not give them a great deal of time on their own business, especially as they wanted to tap into the European market. Onkar Singh in his interview with the Home Office said he works on average 40-50 hours per week (Q.64). Jaspreet Singh stated that he was employed full-time with McDonalds (Q.64). **I find that if the appellants were seriously engaged, as they state, in their plan, and that there is a need to fill a niche market of speciality and authentic Asian products, establishing a relationship with customers and developing handcraft Asian products by working full-time, they would need to go out and obtain contracts in a very competitive market** (emphasis added). They say they would be able to supply Asian groceries to small businesses like Takeaways and where the larger companies would not be able to compete with them because they would be smaller and would give better personal, face to face service to the smaller client. At the moment they say they mainly go to two wholesalers who send the products direct to the small outlets. The appellants do not have any storage space themselves. **I find that the appellants would have difficulty in competing with the present suppliers if they have to go to the wholesalers, then distribute the goods as the small outlets can go direct to the wholesalers to obtain their goods and there would be little profit margin for the appellants** (emphasis added). Also they said about obtaining the goods from India and Pakistan. The appellants have not set out the cost implications. The costs involved would make it difficult for them to compete against the many competitors in the market, which they accept.

39. **I am not satisfied that this is a realistic and genuine business. If it was, they would put far more energy into their customers and not work full-time at Sports Direct and McDonalds. They say they want to go into Europe but they have little time to do so. I have taken into consideration all the evidence submitted by the appellants and respondent. Also the oral evidence of the first and third appellants. I find the appellants are using Indo Corner Ltd as a means of remaining in this country. I also find they have no intention of giving**

**up the full time employment. The company began its operation in October 2012. If the appellants were serious in building up the business they would have been out aggressively finding customers in a very competitive market. I do not accept that this is a genuine entrepreneurial business (emphasis added)."**

14. Miss Qureshi has submitted the FtTJ did not demonstrate he had considered all of the documents or evidence and Judge of the First-tier Tribunal gave permission to appeal on this very issue.
15. I am satisfied the FtTJ considered all of the documents. He confirmed as much in paragraphs [37] and [39]. In the latter paragraph the FtTJ went further and stated he also had regard to the oral evidence of the two entrepreneurs.
16. I have looked at the documents that were before the FtTJ. The two witness statements reiterate that they were committed to the business and that in the past twelve months they turned over £40,000 (not profit). The FtTJ acknowledged what they had done but still concluded the business was not a genuine entrepreneurial business.
17. In assessing whether the FtTJ has given adequate consideration to the bundle of documents it has been necessary for me to consider those documents myself.
18. A tax return and accounts for the period November 1, 2012 to October 31, 2013 were provided and quarterly unaudited accounts were provided covering the period November 1, 2013 to February 2014. The gross profits for the period to October 31, 2013 was £20,543 but the net profit was only £595. The quarterly turnover to February 2014 was £15,733 with a net loss of £702. It is clear the FtTJ had regard to these matters because he assessed the business levels of the business and made findings in paragraphs [38] to [39].
19. Whilst there are VAT returns and purchase invoices these merely demonstrate a level of business activity. The FtTJ clearly was aware of this level of business as he addressed this in his determination.
20. This is not a case where the FtTJ found there was no business. What he did doubt was the genuineness of the business itself and the appellants' intentions. The FtTJ had to have regard to the fact that any person who wished to remain as an

entrepreneur was doing so on that basis alone and if he believed the appellants intended to earn a living through other means and were not genuine entrepreneurs then that was a finding open to him as long as there was some evidence to base such a finding on.

21. The bank statements and affidavits confirmed that monies totalling £50,200 had been invested and a bank statement showed that as at January 28, 2014 the balance in the account remained at £40,425.
22. The FtTJ had regard to the business plan and sales forecast. The level of projected revenue and income was significantly different to the actual accounts and again the FtTJ was aware of this.
23. In summary, the FtTJ was fully au fait with the company's income and profit levels and he also was aware of the entrepreneurs' employments. He took a view, like the respondent, the business was a vehicle to extend their stay in the United Kingdom. He concluded the business operated but he was clearly not satisfied the entrepreneurs would take no employment, other than working for the business or businesses which he has established, joined or taken over.
24. Miss Qureshi argued the FtTJ failed to have regard to their evidence that they would work full-time in the business if the visa was granted but this was something the FtTJ clearly rejected. In paragraph [39] he clearly rejected their evidence that they would work full-time in the business and this was something that was open to him.
25. The bundle of documents was voluminous and they showed a business existed. It was however a business which did not produce the level of expected income outlined in the business plan and the accounts show the business lost money in the quarter to February 2014 and this followed on from a small profit of £595 for the whole previous twelve-month period. There was no evidence that this business could afford to make any payments to the entrepreneurs and the accounts confirmed no such payments.
26. I am satisfied the FtTJ, whilst not setting on any substantial detail, did have regard to all of the matters and he was entitled to make the findings he did. He has explained his reasons and they were open to him. He was entitled to reject their appeal.

27. As stated Miss Quereshi did not pursue any error of law in respect of article 8 and in those circumstances I find no error.

**DECISION**

28. There is no material error of law and the original decision shall stand.
29. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

  
TO THE RESPONDENT

I do not make a fee award as the appeal has failed.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

