



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

Appeal Number: IA/37777/2013

THE IMMIGRATION ACTS

**Heard at Birmingham
on 28th August 2014**

**Determination
Promulgated
on 23rd September 2014**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**MUHAMMAD ZAMAN
FATHINA SIRAI A AMEER
(Anonymity order not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Singh instructed by Ahmad & Williams Solicitors.
For the Respondent: Mr Mills – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Sommerville, dated 6th March 2014, in which he dismissed the appeals of this husband-and-wife against the refusal of their applications for further leave to remain. The first appellant ('the Appellant') applied as a Tier 1 (Entrepreneur) Migrant and his wife as his dependent. The decision also includes a direction of their removal from the United Kingdom made pursuant to section 47 of the 2006 Act.
2. Having analysed the evidence the Judge found that the Appellant had not shown that he could satisfy the requirements of paragraph 41 SD(a) Table 4 paragraph 41 (6) and (9) which was found, in itself, to be fatal to the appeal. The Judge also noted a second head of refusal

in that the Appellant had not submitted an original declaration as required by the Rules. It was not disputed before the Judge that the declaration did not contain the Appellant's signature and only contained that of a Mr Farooq. Additional evidence was provided indicating that an additional document to correct this discrepancy may have been before the decision maker; although as a result of the fact the appeal failed for the first reason set out by the Judge, it was not accepted that this second issues was a material element.

3. In paragraph 13 of the determination the Judge rejected a submission that although the documents did not meet the requirements of the Rules it was clear that US\$200,000 was available to invest in the Appellant's business. It was not accepted by the Judge that this enabled the Appellant to succeed as the strict requirements of the Rules must be met. A submission based upon evidential flexibility was rejected, especially in light of the Court of Appeal decision in Rodriguez [2014] EWCA Civ 2, and it was found no copy of the guidance referred to by Ms Norman who represented the appellants before the First-tier tribunal was available, other than on her mobile telephone.
4. The Grounds assert the Judge failed to consider the Home Office policy guidance for Tier 1 Entrepreneur applications, version 10/2013. The Grounds also assert that the bank letter of 1st January 2014 clearly stated funds are available to the Appellant and that the representative before the First-tier Tribunal failed to present the case properly and failed to explain the relevant Immigration Rules so the Judge was not able to be properly assisted by Ms Norman during the hearing, for which the Appellant should not be prejudiced. It is stated a formal complaint in relation to that matter has been raised with the Bar Council.
5. In granting permission to appeal, Designate Judge of the First-tier Tribunal Lewis refused permission on all grounds bar Ground 1 asserting the Judge failed to consider the Tier 1 (Entrepreneur) Policy Guidance. It is stated this was before the First-tier Tribunal but not reflected in the determination and that it may have a bearing on the decision. As a result, on this ground alone, permission to appeal was granted.

Error of law

6. Before the Upper Tribunal Mr Virk referred to the original appeal bundle in which, at pages 33-42, is a copy of the Tier 1 (Entrepreneur) Policy Guidance version 04/12. It was submitted that paragraph 103 of the Guidance, page 38 of the bundle, was relevant which relates to additional evidence of third party funding and which states:

103 Third parties (other contributors of money) may include family members, as well as other investors or

corporate bodies. If you are
you must also supply each of the

relying on third-party funding,
following documents:

I. A declaration from every third party that they have
made the money available for you to invest in a business
in the United Kingdom.

This declaration must be an original document and not
a copy. It **must** contain:

The names of the third party and your name (and your
team members name if you have formed an
entrepreneurial team);

The date of the declaration;

Your signature and the signature of the third party
(where you have formed an entrepreneurial team,
you and your team member must both sign);

The amount of money available to you from the third
party in pounds sterling; and

The relationship(s) of the third party to you.

For a Venture Capital firm only, confirmation of whether
this body is an FSA registered venture capital firm, in
the form of a document confirming the award and the
amount of money, and including the FSA registration
number that the firm's permission to operate as a
Venture Capital firm is listed as permitted under,
and/or

For a UK entrepreneurial seed funding competition only,
a document confirming that you have been awarded
money and that the competition is listed as endorsed
on the UK Trade & Investments website, together with
the amount of the award naming you as a winner,
and/or

For a UK Government Department only, a document
confirming that it has made money available to
you for the specific purpose of establishing or
expanding a UK business, and the amount.

You must be able to have access to and dispose of the money freely in
the UK. Where you are part of an entrepreneurial team sharing
investment funds both entrepreneurs must have equal access to, and
be able to dispose of, the money in the UK.

A template is included at the end of this guidance the convenience of applicants who wish to use it.

7. The Guidance continues in the same paragraph to advise applicants that in addition to the above they must also provided the specified documents and verification of the validity of signatures on each third-party declaration provided. Mr Virk submitted that on the basis of this paragraph of the Guidance alone the Appellant was able to succeed as the basis that the document of 27th July 2014 is compliant with the Guidance.
8. A bank letter dated 26th April 2012 is to be found at page 26 of the bundle which is stated to be compliant and in the supplementary bundle, which was only filed on 27th August 2014 and was therefore not before the Judge. It is stated that the document provided in the bundle is that submitted with the application to the Entry Clearance Officer, including the required Board Resolution.
9. There is within the supplementary bundle a decision of another First-tier Tribunal Judge which has not produced in accordance with the protocol for citing an unreported determination which, as the First-tier Tribunal is not a Superior Court of Record, is therefore inadmissible. It was a case in which the merits of the appeal were conceded by the Presenting Officer on the facts in any event.
10. Mr Mills, in response, noted that in paragraph 12 of the determination the Judge accepted that the declaration was lodged with the application and signed although there appears to be no reference to the basis on which such a finding was made. It was submitted there are, however, two points raised in the refusal letter of which this is only one. The other point stood against the Appellant and nothing in the Guidance assists the Appellant with regard to this element of the case, which is not dependent on whether the Judge accepted the Guidance was before him or not.
11. Mr Mills submitted that the Appellant has failed to establish how the Grounds on which permission to appeal was granted make any difference to the point the Appellant failed on, as the requirements of the Rules relating to Tier 1 Entrepreneur applications are clear and it was found that he failed to meet those requirements.
12. The first point of note with regard to the Appellants claim is that the grounds on which permission to appeal was granted are very limited and only to the issue of whether, had the Judge considered the Guidance in the bundle, it could have made a material difference to the outcome.
13. The Guidance provided is that referred to as version 04/2012 and the Appellant needed to establish that this was the relevant guidance in force at the date of decision, although it has not been suggested before me that it was not or that the content could not be relied upon.

What the Guidance does not say is that the mandatory requirements of the Immigration Rules relating to applications of this nature can be ignored or that if a discretion existed, that it should have been exercised differently.

14. The requirement for the provision of relevant evidence, as specified in paragraph 41 ST (a), is not disputed and two cases relevant to this issue have supported the need for such requirement to be fulfilled, and that this rule is lawful. These are Fayyaz (Entrepreneurs: paragraph 41-SD(a)(i) - "provided to") [2014] UKUT 296 (IAC) and Durrani (Entrepreneurs: bank letters; evidential flexibility) [2014] UKUT 295 (IAC).
15. Having considered the limited basis on which permission to appeal was granted, the finding of the Judge in paragraph 9 that the Appellant could not satisfy the requirements of the Rules which has not been shown to be adversely impacted upon by the Guidance relied upon by the Appellant in any event, I find it has not been established that any error has been made by the Judge material to the decision to dismiss the appeal. Even if there is evidence of the bank statement showing funds are available the requirement is that such funds are demonstrated by the provision of specified documents complying with the mandatory requirements. This is to enable the decision maker to have confidence in the source of the evidence and any statements made therein that such funds are available; which can be checked with such authorised bodies or third parties if required. There is no near miss principle or an ability to ignore the provisions of the Rules established on the evidence. There is nothing to warrant this decision being overturned on the basis of the available material.

Decision

16. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

17. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....

Upper Tribunal Judge Hanson

Dated the 22nd September 2014

