



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

IA/49387/2013

Appeal Number

IA/49388/2013

IA/49389/2013

THE IMMIGRATION ACTS

Heard at Sheldon
On 13th August 2014
Prepared 14th August 2014

Determination Promulgated
On 14th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

KAMRAN YOUSAF

First Appellant

And

VERD E SAMEEN

Second Appellant

And

ZAYAN KAMRAN

Third Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity directions not made

For the Appellant: Mr R Martin (Counsel, instructed by Ahmad and Williams, Solicitors)

For the Respondent: Mr N Smart (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The First Appellant applied for leave to remain as a member of an entrepreneurial team under Tier 1 of the PBS, the application was made on the 11th of October 2013, the second and third appellants applied as his dependents. The applications were refused for the reasons given in the Refusal Letters of the 6th of November 2013.
2. The Appellants appealed under Notice and Grounds of Appeal of the 20th of November 2013. Their appeals were heard by First-tier Tribunal Judge Ghaffar at Sheldon on the 20th of March 2014 and allowed in a determination promulgated on the 4th of April 2014.

3. In the determination the Judge found that on the basis of the evidence before him the First Appellant had shown that he met the requirements under Tier 1. The Secretary of State sought permission to appeal asserting that the decision was flawed as the Judge had considered post-decision evidence contravening section 85a of the Nationality, Immigration and Asylum Act 2002. As the applications were refused because specified documents had not been submitted and in allowing the appeal the Judge had not found that relevant documents had been submitted with the application as required.
4. The submissions are set out in the Record of Proceedings. Mr Smart relied on the grounds and amplified them. For the Appellant it was submitted that all of the relevant documentation had been submitted with the application and had been mislaid by the Home Office before the application had been considered.
5. Following submissions it became clear that the issue of what had been submitted with the application, what had been supplied later and the application of section 85A of the 2002 Act were issues that had not been identified or addressed in any way in the determination. It is clear that these are fundamental issues that go the heart of the case. On the face of it the Judge appears to have considered evidence not submitted with the application which is clearly an error.
6. In the circumstances I am satisfied that the Judge erred in the approach to the evidence both with regard to its date of submission and admissibility. Accordingly given the fundamental nature of the error it is appropriate to remit the appeal to the First-tier Tribunal for re-hearing on all issues with no findings being preserved. The Appellants are permitted to serve further evidence relating to the documentation submitted and the Secretary of State is to have the right to reply.

CONCLUSIONS

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

I set aside the decision.

The appeals of the Appellants are remitted to the First-tier Tribunal for re-hearing on all matters.

Anonymity

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

Fee Award

I make no fee award, this will be a matter for the First-tier Tribunal.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 13th August 2014