



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/08657/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 15<sup>th</sup> May 2015

Determination Promulgated  
On 27<sup>th</sup> May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

MRS IDOWU FUNMILAYO AKINTOYE  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr O Fayemiwo, Solicitor instructed by King Partners Solicitors  
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Nigeria whose date of birth is recorded as 30<sup>th</sup> June 1976. On 12<sup>th</sup> December 2013 she made a combined application for leave to remain in the United Kingdom as a Tier 1 (General) Migrant under the points-based system

and for a biometric residence permit. On 31<sup>st</sup> January 2014 a decision was made to refuse the application and to remove her from the United Kingdom by way of directions pursuant to Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. There is a history to this Appellant's status in the United Kingdom. She was first granted leave to enter as a Tier 1 (General) Migrant on 19<sup>th</sup> November 2008. I note that in December 2011 there was a further grant of leave on the same basis. In the instant application the Appellant claimed points for earnings in the sum of £21,007 but the Secretary of State was not satisfied that the Appellant met the requirements of paragraph 19-SD(a) of Appendix A in relation to applications made under the points-based system.
3. The Appellant appealed and on 11<sup>th</sup> August 2014 her appeal was heard by Judge of the First-tier Tribunal Bart-Stewart sitting at Taylor House. The appeal in the First-tier Tribunal focused on the nature of the "employment" which the Appellant had, pursuant to a contract of 12<sup>th</sup> September 2012 with Ohi Catfish & Multipurpose Farm ("OHI"). The nature of that "employment" was relevant on the Appellant's case because if it were accepted that she was in business rather than employed or self-employed then she met the requirements of paragraph 19-SD with the evidence she had provided with the application; no accountant's letter being required. In the event the judge found that the Appellant was self-employed and, given the various documents that were made available and not made available, an accountant's letter was required. I set out below, more particularly the requirements of paragraph 19-SD.
4. By Rule 19(a) it is provided that:

*"In all cases, the applicant must provide at least two different types of the specified documents in paragraph 19-SD(a) from two or more separate sources as evidence for each source of previous earnings."*

Paragraph 19-SD provides –

- (a) *the specified documents in paragraph 19(a) are:*
  - (i) *payslips covering the whole period claimed, which must be either:*
    - (1) *original formal payslips issued by the employer and showing the employer's name, or*
    - (2) *accompanied by a letter from the applicant's employer, on the employer's headed paper and signed by a senior official, confirming the payslips are authentic;*
  - (ii) *Personal bank statements showing the payments made to the applicant;*

- (iii) *A letter from the applicant's employer(s) during the period claimed (or in the case of winnings, the relevant awarding body), on company headed paper, which:*
  - (1) *is dated after the period for which earnings are being claimed, and*
  - (2) *clearly confirms the applicant's gross and net earnings during the period claimed, and the date and amount of each payment;*
- (iv) *Official tax document produced by the relevant tax authority or employer, showing earnings on which tax has been paid or will be paid in a tax year;*
- (v) *Dividend vouchers which show the amount of money paid by the company to the applicant, normally from his profits, and which confirm both the gross and net dividend paid. The applicant must provide a separate dividend voucher or payment advice slip for each dividend payment, to cover the whole period claimed;*
- (vi) *If the applicant is claiming points for self-employed earnings, a letter from his accountant on headed paper, confirming that the applicant received the exact amount he is claiming, or the net profit to which he is entitled. This is a letter from the applicant's accountant on headed paper confirming the gross and net pay for the period claimed. The letter should give a breakdown of salary, dividends, profits, profits, tax credits and dates of net payments earned. If the applicant's earnings are a share of the net profit of the company, the letter should also explain this;*
- (vii) *Invoice explanations or payment summaries from the applicant's accountant, which include a breakdown of the gross salary, tax deductions and dividend payments made to the applicant, and which enable the UK Border Agency to check that the total gross salary and dividend payments correspond with the net payments into the applicant's personal bank account.*
- (viii) *Company or business accounts that meet statutory requirements and clearly show:*
  - (1) *the net profit of the company or business made over the earnings period to be assessed;*
  - (2) *both a profit and loss account (or income and expenditure account if the organisation is not trading for profit), and*
  - (3) *a balance sheet signed by a director;*
- (ix) *Business bank statements showing the payments made to the applicant;*
- (x) *If the applicant provides a combination of bank statements and a letter of invoice summary from his accountant, he must also provide any invoices generated during the period for which earnings are being claimed."*

The Rule then goes on to deal with specified documents in 19(b) which are not relevant for the purposes of this appeal.

5. The judge dismissed the appeal. He was not satisfied that the Appellant was anything other than self-employed and in the circumstances of the case as advanced before him found that an accountant's letter was required which had not been supplied. Not content with the decision of the First-tier Tribunal, by Notice dated 10<sup>th</sup> September 2014 application was made for permission to appeal to the Upper Tribunal. The grounds essentially rehearse the arguments that were advanced before the First-tier Tribunal but contend that the judge erred in law in finding that the Appellant was not in business and that an accountant's letter was required. Permission was initially refused but on the renewed application permission was granted.
6. At no point in the application for permission to appeal to the Upper Tribunal was the point taken that the Secretary of State should have exercised her discretion under any evidential flexibility policy or Rule. I invited Mr Fayemiwo to point to any part of the grounds bringing the matter to the Upper Tribunal as distinct to any of the grounds that were before the First-tier Tribunal and he was not able to take me to that. I mention this that because during the course of the submissions before me there was an attempt to expand the grounds on the basis upon which the matter was before the Upper Tribunal. I refused permission to expand matters at this very late stage.
7. It is argued on behalf of the Appellant that the judge erred in finding the Appellant to be self-employed. The significance of that, so far as the Appellant is concerned, is that when one looks at paragraph 19-SD(vi) it is only if she were claiming points for being "self-employed" that a letter from an accountant, on headed paper, would be required. If she were, as is contended, "in business" then the situation would be somewhat different and there would be the opportunity to satisfy the requirements of the Rule by the production of two other documents identified elsewhere within 19-SD.
8. The first document relied upon for the purpose of demonstrating the earnings pursuant to the contract of 12<sup>th</sup> September 2012 is a bank statement from the Guarantee Trust Bank PLC but which has as its print date 2<sup>nd</sup> December 2013. Both representatives were in agreement that that particular document met the requirements of the Rule. There was also agreement that that documents was produced with the application.
9. The second document relied upon by the Appellant is a letter dated 8<sup>th</sup> May 2013 from OHI. It reads as follows:

*"Dear Mrs Akintoye*

*Contracted dated 12 September 2012: Re: Invoice dated 07 May 2013*

*I can confirm that the sum of = N = 5,200,000.00 Nigeria naira (Five Million Two Hundred Thousand Naira) has already been approved in your favour in line with our agreement dated 12 September 2012. Indeed we have commended making part-payments in this respect.*

*We believe that our payment(s) should have started to reflect in your bank account.*

*We crave your indulgence that our payments will be made in instalments though in quick succession. This is on account of our accounting system and strait cash flow situations for the time being. We hope that this will not affect our business relationship."*

The letter is then signed by the Managing Director.

10. There is no issue taken by the Secretary of State as to whether or not this is a bona fide letter but the issue is whether or not it satisfies the requirements of the Rules. For the Appellant, Mr Fayemiwo relies on paragraph 19-SD(iii). That subparagraph clearly relates to a situation where an applicant is in employment. It says so. It could not be clearer in its terms. It says, "a letter from the applicant's employers". Clearly the Rules contemplate situations in which an individual would be self-employed. Paragraph (vi) makes plain that if the applicant is claiming points for self-employed earnings then a letter from the accountant is required but that is not the Appellant's case. She contends that she is not, and was not, for the purpose of this contract self-employed so that an accountant's letter was not required and indeed no accountant's letter was produced.
11. Could a person in business meet the requirements of the Rules? The answer to that is, "Yes" and the Rules in my judgment clearly contemplate the situation where if a person is in trade they can provide documentation that would meet the requirements such as an official tax document - see (iv), or (v) dividend vouchers or indeed invoices (vii) or company or business accounts (viii).
12. It is clear to me that the mischief under the Rules is to ensure that the Secretary of State is in a position to know what the gross and net amounts of money available to the applicant are, so that a proper assessment can be made under the Rules. The letter is deficient not only because it is not, and has never been the Appellant's case that for the purposes of this particular contract she is employed, but it is also deficient because it refers a sum which is clearly gross. When read together with the contract, still the net amount is not given.
13. On behalf of the Appellant application was made to adduce, pursuant to Rule 15 of the Upper Tribunal (Procedure) Rules 2008 a letter from an accountant dated 11<sup>th</sup> November 2013. Quite why that letter was not sent with the application when the application itself is dated 12<sup>th</sup> December 2013 when that the letter clearly was in existence prior to the application being made, is not clear. Nevertheless, the letter is inadmissible. The letter should have been sent with the application. It was not. It is excluded by virtue of Section 85A of the Nationality Immigration and Asylum Act 2002, notwithstanding any directions made for the purposes of this appeal.

14. On behalf of the Appellant Mr Fayemiwo pointed to the directions made, in particular the directions to the effect that:

*“The Appellant must file at the Upper Tribunal and serve upon the Respondent no later than five working days before the Upper Tribunal initial hearing a bundle of all relevant documents including a detailed skeleton argument and copies of the relevant Immigration Rules and Home Office guidance/instructions in force at the material time”.*

15. The evidence can only be relevant if it is admissible. It is not admissible. By that I refer to the accountant’s letter which, in any event, were I to admit it, points to the very deficiency identified by the Secretary of State since the letter deals with both gross and net sums.
16. In all the circumstances I find that the issue as to whether or not the Appellant was self-employed or in trade is immaterial because whether or not the Appellant was self-employed or in trade, she did not produce the documentation required under the Rules. The points-based system is designed in order to be efficient with caseworkers being able to deal with cases, speedily and fairly. It is incumbent upon applicants to place before the Secretary of State the relevant documents at the relevant time.
17. Mr Fayemiwo sought to persuade me that there had been unfairness on the part of the Secretary of State, which unfairness the judge ought to have identified because there had been a previous application, with identical documentation submitted to the Secretary of State resulting in a variation of leave. I have seen a copy of the earlier application but I was not satisfied from the bundle of documents produced that in fact the documentation was identical in terms. In any event the point was not a point that was taken in the grounds bringing the matter before the Upper Tribunal and therefore it is not a matter which is before me.
18. In all the circumstances the appeal is dismissed.

**Notice of Decision**

The appeal to the Upper Tribunal is dismissed. The decision of the First-tier Tribunal is affirmed.

**Signed**  
**Deputy Upper Tribunal Judge Zucker**

**Date**