



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/09091/2014

THE IMMIGRATION ACTS

Heard At Field House
On 14^h May 2015

Decision and Reasons Promulgated
On 21st July 2015

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

Between

MISS THARMINI MURUGADAS
(NO ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance.

For the Respondent: Ms Julie Isherwood, Home Office Presenting Officer.

DECISION AND REASONS

Introduction

1. The appellant is a national of Sri Lanka born on 2 January 1985.
2. She came to the United Kingdom on 1 October 2009 on a student visa. She was subsequently granted leave until 8 July 2013 as a post study migrant. On 6 July 2013 she applied for leave to remain as an entrepreneur. This was refused on 12

February 2014. The Secretary of State was not satisfied she was a genuine entrepreneur intending to invest money.

3. The business related to the import of textiles and was to be carried out through a private limited company, Tharmi Solutions Ltd, formed on 13 May 2013. The appellant claimed she had £50,000 to invest. She produced Barclays bank statements with a balance on 8 July 2013 of £56,336. At interview he disclosed that her sister had provided her with the monies. The respondent noted the monies were paid in shortly before the application and believed the deposits were a paper exercise to facilitate the application rather than investment.
4. The business plan indicated there were no business premises. At interview she was not convincing. There was a lack of evidence of any in-depth market research. When asked about competitors she said there were none in the area but a simple check revealed several hundred in London where the company was based. She had produced one contract dated 28 June 2013. A check on the customer revealed it was a limited company only established two months before the contract.
5. The appellant's background was in computing not textiles. The respondent concluded she did not have sufficient previous education or experience for the business.
6. Her appeal was heard by First-tier Judge Hubball on 3 October 2014. The appellant attended and was represented, as was the respondent. In a decision promulgated on 17 October 2014 her appeal was dismissed under the immigration rules and under article 8, the latter having been raised in the grounds of appeal.
7. The judge focused upon the question of funding and whether the appellant genuinely intended to establish a business. In oral evidence she said she lived with her sister and brother-in-law and their two young children. The judge noted the appellant's sister, her financial backer, had not given evidence. At paragraph 66 the judge concluded the appellant had not shown on the balance of probabilities that the funds were genuinely available to her to invest. The judge pointed out that the monies were transferred into her account proximate to the application date. The judge found a lack of business knowledge on her part.
8. Regarding article 8, it had been accepted on behalf of the appellant she could not meet the requirements of appendix FM or paragraph 276 ADE. The judge referred to section 117 and that the maintenance of effective immigration control is in the public interest. The judge did not see any compelling circumstances outside the immigration rules.

The Upper Tribunal

9. Permission to appeal to the Upper Tribunal was granted on the basis it was arguably an error of law to raise the source of the funds rather than whether they were actually available with a view to investment. At paragraph 63 the judge had

referred to the major transfers into her bank account coming from Tharmi Solutions and the respondent's concern as to the source of the money.

10. The appellant has not attended her appeal. Notification of the hearing was sent to her on 16 April 2015. There is a medical report in the file from Kettering General Hospital received in the Upper Tribunal on 12 May 2015. It states the appellant was an inpatient from 2 May to the 6 May 2015. On discharge her condition was described as stable. She had been complaining of general malaise and had been treated for a chest infection. She also was seen by a rheumatologist for consideration of an arthritic condition. On discharge she was stable and fit. She also enclosed a letter dated 9 May 2015, in which she asked for her appeal to be heard in her absence. In the circumstances I saw no reason to adjourn the hearing and decided to proceed in her absence.

Conclusions

11. From reading the decision of First-tier Judge Hubball the judge did not dismiss the appeal because the source of the monies in the appellant bank account was not identified. The judge concluded the appellant had not discharged the burden of proof to show that she genuinely was an entrepreneur.
12. The judge made the comment that monies were introduced into her account shortly before the application was made. In itself, this could be viewed as a person calling in funds to launch a project. The appellant's claim was that the bulk of the money came from her sister, with whom she lived. In itself there is nothing wrong with this and if a close family member was willing to finance a project well and good. However, the judge made the comment the sister did not attend. The genuineness of the enterprise could not be further probed by cross-examination of her sister.
13. The appellant indicated she would repay her sister from the profits of the business. In assessing the genuineness of the project her sister's circumstances, as her financial backer, would be relevant. The concern was that this was a contrived application. Her sister could be injecting money into her bank account shortly before her leave was due to expire to support an application. Whether she truly was willing to advance the money for a business was crucial. This was a reasonable concern to raise.
14. The judge has clearly set out the arguments advanced by the respondent. It is important to note the structure of the decision and not to confuse what is recorded as submissions with the judge's own findings and reasons. There is passing reference to the source of the money. However, when the decision is read as a whole it is clear the source of the money is not the issue. The issue is the genuineness of the project.
15. At paragraph 63 of the determination the judge is repeating the respondent's concerns. At paragraph 64 the judge agreed with the presenting officer's submission that she had not shown the funds were genuinely available to her. The

legitimate concern was that funds had been introduced on a temporary basis to bolster her claim to be an entrepreneur and the project was not genuine. The focus was on the genuineness of the funds being used for investment in a project rather than the source of the funds.

16. The decision highlights the fact that the appellant was aware that the respondent was questioning the genuineness of the project and the claimed investment. This meant she was made aware of the issue and had the opportunity to discharge the burden of proof. The immigration judge concluded she had failed to do so. I see no error of law in this approach. My conclusion therefore is that the First-tier judge's decision shall stand. No material error of law has been demonstrated.

Decision.

17. The appeal is dismissed as no error of law is disclosed. The decision of First-tier Judge Hubball dismissing the appeal shall stand.

FJ Farrelly

A Deputy Judge of the Upper Tribunal

Date