



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/09376/2014

THE IMMIGRATION ACTS

Heard at Field House  
On 21 May 2015

Decision and Reasons Promulgated  
On 27 May 2015

Before

Deputy Upper Tribunal Judge MANUELL

Between

Miss DEEPTI MUTTERJA  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr V Makol, Solicitor  
(Maalik & Co)

For the Respondent: Ms E Savage, Home Office Presenting Officer

**DETERMINATION AND REASONS**

*Introduction*

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Levin on 9 March 2015 against the determination of First-tier Tribunal Judge George who had dismissed the Appellant's appeal as a

Tier 1 (Entrepreneur). The decision and reasons was promulgated on 19 January 2015.

2. The Appellant is a national of India, born on 18 March 1988. Judge George described the Appellant as an impressive and credible witness, and found that the Appellant had shown that her occupation was as an IT Business Specialist at NQF level 6. The judge found that the Appellant had met Appendix A, Table 4(d)(iv) of the Immigration Rules: see [9] to [12] of the decision. But the judge found at [15] of the same decision that the Appellant had not satisfied the regulated financial institutions and disposable in the United Kingdom requirements of Appendix A. The appeal was accordingly dismissed.
3. Permission to appeal was granted by Judge Levin because he considered that it was arguable that the judge had erred in that finding. The Respondent had accepted that the Appellant had provided sufficient evidence to show that she had access to at least £50,000. The judge's reasons for dismissing the appeal were unclear and the Appellant could not know why she had lost.
4. Standard directions were made by the tribunal. A rule 24 notice dated 17 March 2015 opposing the appeal had been filed on the Respondent's behalf. There it was stated that "Whilst it is accepted that [the Appellant] has funds in excess of £50k at the Punjab and Sindh Bank. These funds are a fixed deposit and not available until the maturity of the deposit which would have been after the date of the application." (sic).
5. In a response to the Respondent's rule 24 notice dated 19 May 2015, the Appellant submitted that the Respondent was attempting to resile from the position as to funds which had been accepted in the reasons for refusal letter.

*Submissions – error of law*

6. Mr Makol for the Appellant relied on the grounds of onwards of appeal and the grant of permission to appeal. He submitted that the judge had reached erroneous findings as to the funds. The reason no points had been awarded for funds after the acceptance that funds were available as required was because of the occupation issue: see the section commencing (d) in the first box (under Appendix A: Attributes) of the reasons for refusal letter. This was why no points

had been awarded for the subsequent boxes in the letter, "Funds held in regulated financial institutions" and "Funds disposable in the United Kingdom". Because the judge had resolved that issue in the Appellant's favour (see [9] to [12] of the decision), the Appellant was entitled to points under all three sections: Table 4(d)(iv) had been satisfied. The only proper conclusion was that the appeal had to be allowed.

7. Ms Savage for the Respondent relied on the rule 24 notice, although candidly recognised that the reasons for refusal letter was not as clear as it might have been and that the rule 24 notice was open to question.
8. There was nothing Mr Makol wished to add by way of reply
9. The tribunal indicated at the conclusion of submissions that it found material errors of law, such that the decision and reasons had to be set aside in part. The onwards appeal was allowed. The tribunal's determination was reserved.

*Material error of law finding*

10. The tribunal accepts Mr Makol's submissions. The grant of permission to appeal identified the material error of law. The decision and reasons must have come as a considerable surprise to the Appellant and it is indeed true that the Appellant would not have been able to understand why she had lost her appeal having succeeded on the only points in issue. The decision and reasons have been carefully prepared and the lack of clarity in the reasons for refusal letter may go way towards explaining how the judge erred at [15] of the decision and reasons.
11. The Respondent's belated attempt to modify the reasons for refusal letter is mistaken and inadmissible. As a matter of simple banking law, repayment of a fixed deposit cannot be refused. The consequence of early repayment is that interest is forfeited. Thus the funds were correctly accepted as available in the reasons for refusal letter.
12. The tribunal accordingly finds that there were material errors of law in the decision and reasons, requiring the decision to be remade. No further submissions were required for that purpose. Apart from the findings at [15], the other findings made by the judge were clear and sustainable, and stand. [15] must however be set aside. The decision

and reasons must be remade in the only manner possible, namely that the Appellant's appeal is allowed because she satisfied Table 4(d)(iv) of Appendix A of the Immigration Rules.

**DECISION**

The Appellant's appeal to the Upper Tribunal is allowed

The making of the previous decision involved the making of errors on points of law. It is set aside and the original decision is remade as follows:

The Appellant's appeal to the First-tier Tribunal is allowed

**Signed**

**Dated**

**Deputy Upper Tribunal Judge Manuell**

**TO THE RESPONDENT**

**FEE AWARD**

The appeal was allowed and the tribunal makes a full fee award

**Signed**

**Dated**

**Deputy Upper Tribunal Judge Manuell**