



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/10731/2014
IA/12479/2014
IA/14887/2014

THE IMMIGRATION ACTS

Heard at Field House
On 2 December 2014

Decision and Reasons promulgated
On 14 August 2015

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

**(1) Nousheen Shoukat
(2) Muhammad Azim Waqar
(3) Muhammad Quddos Anwar
(No anonymity orders made)**

Appellants

and

Secretary of State for the Home Department

Respondent

Representation

For the Appellants: Ms. B. Hashmi of Mamoon Solicitors.
For the Respondent: Mr. I. Jarvis, Home Office Presenting Officer.

DECISION AND REASONS

1. These are linked appeals against the decisions of First-tier Tribunal Judge N M K Lawrence promulgated on 7 October 2014 dismissing the Appellants' appeals against decisions of the Respondent dated 11 February 2014 to refuse to vary leave to remain and to remove each of them from the UK pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006.

Background

2. The Appellants are nationals of Pakistan born on 25 December 1981, 17 May 1986, and 2 July 1977 respectively. The First Appellant is the wife of the Third Appellant. The Appellants' respective immigration histories are a matter of record on file and are known to the parties: accordingly I do not reproduce them here. On 10 July 2013 the First and Second Appellants applied for leave to remain as Tier 1 (Entrepreneur) migrants; the Third Appellant applied for leave to remain as the partner of his wife. Their applications were refused for reasons set out in respective combined 'reasons for refusal' letters and Notices of Immigration Decision dated 11 February 2014.
3. The Appellants appealed to the IAC.
4. The First-tier Tribunal Judge dismissed the appeals of each of the Appellants for reasons set out in his decision.
5. The Appellants applied for permission to appeal which was granted by First-tier Tribunal Judge Simpson on 24 October 2014.
6. The Respondent has filed a Rule 24 response dated 12 November 2014 resisting the challenge to the decisions of the First-tier Tribunal.

Consideration

7. The Respondent refused the Tier 1 (Entrepreneur) applications of the First and Second Appellant after consideration of supporting documents and interviews with the First and Second Appellants, essentially because she was not satisfied that they genuinely intended to establish themselves in business, or genuinely intended to invest the funds claimed to be available, or that the claimed funds were genuinely available. It may readily be appreciated that these matters are interrelated.
8. The decision letters in this regard, in my judgement, are on their face cogent and well-reasoned. Issues were raised in particular about: reconciling the source of £50,000 joint funds with the respective narrative accounts given by each of the entrepreneurial applicants at interview and the tracing of the sources of such funds; the personal and business relationship between the First and Second Appellant, including their geographical separation both in Pakistan and in the UK; the absence of any apparent evidence of market

research coupled with inconsistencies in their respective accounts as to who was responsible for conducting market research; the logistics of operating the business, including the apparent search for premises in Stoke when most of the potential clients were said to be based in the Luton area; the contractual agreement to provide business services to a client based in Manchester; a similar earlier application had been refused in respect of the availability of funds on the basis that the supporting documents did not meet the evidential criteria, yet the current application did not seek to rely on the same funds but on apparently different sources of funding – the Respondent considered that this demonstrated that the previous funds had not been genuinely available which in turn cast doubt on the claimed current availability of funds. Overall the Respondent formed the view that the evidential materials provided by the Appellants had been ‘put together’ simply in an attempt to meet the requirements of the Rules but did not represent any genuine business intentions.

9. The Third Appellant was refused ‘in line’ with the refusal of his wife.

10. On appeal the First-tier Tribunal Judge upheld the decisions of the Respondent. In some respects I acknowledge that it might be said that the decision of the Judge is less thorough than that of the Respondent’s decision-maker: the focus in the Judge’s decision is primarily on the availability of funds and there is far less by way of consideration of the overall viability of the business and the genuine intentions of the Appellants. Be that as it may, the Judge having reviewed the evidence and set out his findings stated his conclusion in the following terms at paragraph 20, which in my judgement fairly, adequately, and sustainably reflect both his previous reasoning and the bases of the Respondent’s decisions:

“On the evidence before me I find the first and second appellants are not genuine business persons. Their claim that they wish to operate a business in the UK is not genuine. They are not able to say where the funds for their joint venture is said to come from. Their account given in the interview is not supported by the history of the deposits made into their investment funds. In my view, the funds have [been] put together but not for the purposes of a genuine business venture. They live in two different cities but have not provided any evidence at all as to how they intend to run their business. Meeting once a month does not demonstrate that this is a genuine business venture. The provision of invoices is insufficient evidence of any business. There must be paper trail from service provided to customer.”

11. The Appellants’ challenge to the decisions of the First-tier Tribunal Judge as set out in the Grounds in support of the application for permission to

appeal are in part essentially a disagreement with the findings of the Judge and the outcome in the appeal (eg Grounds at paragraphs 1-3, 6-7, 10), in part allege unfairness by the Judge for not putting matters of dispute to the Appellants (eg Grounds at paragraphs 3, 4-5, 8, 10, 11), and in part claim that the Judge erred in not being satisfied that invoices provided adequate evidence of trade (Grounds at paragraphs 9-10).

12. It appears that it was this latter basis of challenge that influenced the decision to grant permission to appeal. Judge Simpson observed that the First-tier Tribunal Judge “*failed to consider the recent decisions in Shebl (Entrepreneur: proof of contracts) [2014] UKUT 00216 (IAC) and Ahmed & Anor (PBS: admissible evidence) [2014] UKUT 00365 (IAC) when considering the evidential value of the [invoices]*”.
13. I do not find a consideration of either case assists the Appellants in demonstrating an error of law in the context of their particular appeals. The case of Ahmed is about the exclusion of new evidence and therefore is not directly ‘on point’. The case of Shebl is concerned with the evidential requirements of paragraph 41-SD of Appendix A of the Rules and is therefore not concerned with the overall viability of a business, which is the essential basis of the adverse decisions herein.
14. Moreover I find that there is no substance in the Appellants’ complaints to the effect that the Judge failed to put matters to them that were ultimately adversely determinative in their appeals. The Judge has not relied on any matters that were not clearly and adequately raised in the Respondent’s decisions. In this context it is to be recalled that the decisions rejected the applications in fundamental terms: nothing in relation to either the funding or the genuine intentions and viability of the proposed business was accepted by the Respondent. It was, therefore, made clear to the Appellants that all issues were at large in the appeal. It was not, in such circumstances, for the Judge to seek to engage the Appellants by way of some interrogatory process, but for the Appellants to make good their case under the Rules in all respects.
15. For the avoidance of any doubt I make it clear that I consider that the Appellants at paragraph 11 of the grounds in support of the application for permission to appeal misunderstood the basis of the Respondent’s reliance upon the refusal of their earlier application. It is clear from the decision letter that the Respondent considered that the apparent failure in the current application to make use of the funds said to have been available to support the earlier application cast doubt on the genuine availability of those funds in the earlier application, and thereby cast doubt both of the

genuineness of the First and Second Appellant as entrepreneurs, and the veracity of their current claims in respect of funding. That was a matter to which the Respondent was entitled to have regard. Further, it was a matter clearly raised in the refusals, and was therefore a matter which the Appellants had every opportunity to address on appeal.

16. I detect no procedural unfairness in the approach taken by the First-tier Tribunal. In my judgement the evaluation of the evidence was open to the Judge, and he reached sustainable conclusions in the appeals which are adequately reasoned.
17. The Appellants' Grounds include a single paragraph in respect of Article 8. The paragraph is premised on the Appellants "*running a well-established business in the United Kingdom*" into which "*they have already investment major chunk of the investment funds*". This ground does not actually allege any error of law, and in any event its premises fail on the findings of the Judge.
18. Accordingly, in all the circumstances I reject the Appellants' challenge to the decisions of the First-tier Tribunal.

Notice of Decision

19. The decisions of the First-tier Tribunal contained no errors of law and stand.
20. Appeal IA/10731/2014 is dismissed.
21. Appeal IA/12479/2014 is dismissed.
22. Appeal IA/14887/2014 is dismissed.

Deputy Judge of the Upper Tribunal I. A. Lewis 7 August 2015