



IAC-FH-NL-V1

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

Appeal Numbers: IA/11232/2014
IA/11239/2014
IA/11262/2014
IA/11263/2014
IA/11264/2014
IA/11265/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 11th February 2015**

**Determination
Promulgated
On 18th February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE FRANCES

Between

**MR MUHAMMAD QASIM KAMAL (FIRST APPELLANT)
MRS NASHMIA KIANI (SECOND APPELLANT)
MR MUHAMMAD YASIR AZIZ (THIRD APPELLANT)
MISS SAIMA YASIR (FOURTH APPELLANT)
MISS SHAHZIL DUA YASIR (FIFTH APPELLANT)
MISS RIDA YASIR (SIXTH APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr R Parkin, David Wyld & Co Solicitors
For the Respondent: Mr Shilliday, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are all citizens of Pakistan. The first and second Appellants are husband and wife. The third to sixth Appellants are husband, wife and children. The first and third Appellants are the lead Appellants in this combined appeal, the other Appellants being their respective dependants. It is acknowledged that the appeals of the dependants stand or fall with the appeals of the two lead Appellants.
2. The lead Appellants form an entrepreneurial team and made applications for further leave to remain in the UK, after periods as students and then Post-Study Work Migrants, as Tier 1 (Entrepreneur) Migrants. Their applications were refused by the Respondent on 24th February 2014. Their appeals against the refusals to vary leave and the decisions to remove them was dismissed by the First-tier Tribunal on 1st September 2014. I shall refer to the lead Appellants as the Appellants throughout this appeal.
3. Permission to appeal was granted by Upper Tribunal Judge Storey on the ground that it was arguable that the Judge failed to give adequate consideration to paragraph 245AA of the Immigration Rules. The Upper Tribunal Judge directed that the Respondent produce a paginated bundle of a full set of documents, which she received in respect of the Tier 1 applications by both lead Appellants. The Respondent in compliance with this direction produced a bundle and submitted it to the Tribunal on 28th January 2015.
4. At the hearing, the Respondent produced the original documents contained in that bundle. It was agreed that in addition to those documents the Appellants had also submitted the business cards, which appeared at pages 19 and 20 of the Appellants' bundle.
5. Mr Parkin on behalf of the Appellants submitted that the two contracts, (pages 22 to 27 of the Appellants' bundle), the two letters from Companies House (pages 10 to 11 of the Appellants' bundle) and a certificate of incorporation and accompanying documents (pages 12 to 18 of the Appellants' bundle) were also submitted with the application. The Respondent accepted that two pages of one contract and the last page of the other contract were submitted, but that the certificate of incorporation and accompanying documents were not submitted with the application. Having confirmed the relevant documentation it was agreed that the relevant applicable Immigration Rules were those set out in the Appellants' skeleton argument.
6. Mr Parkin accepted that there was no error of law in the Judge's finding that the Appellants had not submitted advertising flyers with his application. He submitted that paragraph 245AA(d) applied and the business cards were sufficient evidence of marketing material to satisfy paragraph 41-SD(iii). The only missing element was "business activity", but this was evident from the business plan submitted with the application and the Appellants' website.

7. Paragraph 245AA(d) states that “If the applicant has submitted a specified document which does not contain all the specified information but the missing information is verifiable from other documents submitted with the application or the website of the organisation who issued the documents the application may be granted exceptionally provided the Entry Clearance Officer, Immigration Officer or the Secretary of State is satisfied that the specified documents are genuine and the applicant meets all the requirements.”
8. In relation to the contracts, Mr Parkin submitted that the Judge’s finding that the contracts had been submitted in a “mixed-up” state, as produced in the Respondent’s bundle, was open to him on the evidence. The Appellants contend that they submitted two full contracts. In any event, what was submitted complied with the Immigration Rules because there was no requirement that the person making the contract signed it. The Judge’s finding that the wrong parts of the contract were sent with the application implied that he recognised that the two contracts existed and since the documents submitted satisfied the technical requirements of paragraph 41-SD, paragraph 245AA was not relevant.
9. Mr Parkin submitted that paragraph 41-SD(e) required the Appellants to submit a current appointment report dated no earlier than three months before the date of application listing the applicant as the director of the company and confirming the date of his appointment. The company must be actively trading and not dissolved or in liquidation. Directors who were on the list of disqualified Directors provided by Companies House would not be awarded points.
10. Instead of submitting a current appointment report the Appellants produced a certificate of incorporation of a private company dated 18th December 2013 issued by Companies House. It listed the main Appellants as directors and confirmed the date of their appointments. It contained the same information as that which would have been contained in the current appointment report. Accordingly, the Appellant had submitted a document in the wrong format and paragraph 245AA applied. The Judge erred in law in finding that the Appellants had submitted the wrong document altogether. The document from the correct source with the correct information with the incorrect title was not the wrong document.
11. In any event, the information remained available on the Companies House Webcheck website throughout. The Respondent should have followed the procedure outlined in 245AA(b) or (d) and either requested a Companies House current appointment report or exceptionally allowed the application having regard to the material publicly available at Companies House.
12. Mr Parkin submitted that if the Appellant succeeded on the three points he had raised then the matter should go back to the Secretary of State and the appeal should be allowed insofar as the decision was not in accordance with the law.

13. Mr Shilliday submitted that the final point in relation to the certificate of incorporation was fatal to the appeal. The document was the wrong document and the First-tier Tribunal's findings at paragraph 16 of the determination were correct. It may well be that the document produced had the same information that would have been on the current appointment report, but the situation could have changed.
14. In relation to the contracts, the Appellants had produced parts of two contracts and not a full contract. They were two partial documents. They could have produced the correct document but they did not. The Appellants could not satisfy the Immigration Rules in respect of evidence demonstrating that the business was actively trading. Mr Shilliday submitted that the business cards did not amount to marketing material and that information could not be obtained from the other documents submitted in the bundle.
15. In relation to paragraph 245AA, he submitted that documents were not requested by the Respondent because addressing the area would not have led to a grant of leave. There were too much wrong with the application for paragraph 245AA to apply. The application was defective in that the Appellants had failed to produce the specified documents. They failed to produce a schedule of the documents submitted and therefore there was no evidence that the required documents were before the Respondent prior to the decision of 24th February 2014. It was for the Appellants to prove that such documents had been submitted and they had failed to do so.

Discussion and Conclusions

16. I find that the Appellants had failed to show that the certificate of incorporation and letters from Companies House were submitted with the application because they were not referred to in the schedule of documents annexed to the application and they were not in the bundle of original documents on the Home Office file. There was no reference to these documents in the refusal letter which refers to business cards and contracts but then states "you have therefore not submitted the evidence specified in paragraph 41-SD(e) of Appendix A".
17. Mr Parkin submitted that the Judge accepted the Appellants' claim in their witness' statements that the documents were produced, but they were not the correct documents. He submitted that the Respondent had taken a similar position in the refusal letter. I am not persuaded by Mr Parkin's submission that these documents from Companies House were before the Respondent because they were not explicitly referred to in the refusal letter. They first appeared in the Appellants' bundle before the First-tier Tribunal submitted by fax on 19th August 2014.
18. In any event, the First-tier Tribunal considered the documents and found that they did not comply with the specified documents required by

paragraph 41-SD(e)(v). The Rules require the Appellants to submit a current appointment report. The Appellants had submitted a certificate of incorporation.

19. Mr Parkin submitted that the documents contained the same information and therefore paragraph 245AA applied because the Appellants had submitted a document in the wrong format. I am not persuaded by this submission because the Rules clearly state the type of document required. A current appointment report was different to a certificate of incorporation. Although in this particular case the information contained in them may well be the same, the documents have different purposes and the information could change over time. Mr Parkin accepted that the Appellant would not be able to rely on the certificate of incorporation if the application was made today.
20. I find that the failure to submit a current appointment report was fatal to the application and therefore the Appellants have failed to show that they meet the requirements of paragraph 41-SD of the Immigration Rules. Accordingly, they have failed to demonstrate that they were entitled to the points awarded under provision (4) of table 4 of Appendix A.
21. Paragraph 245AA does not assist the Appellants in respect of the certificate of incorporation because the Appellants have failed to show that it was submitted with the application and, in any event, it is clearly the wrong document. It is not a document in the wrong format as envisaged under the Immigration Rules.
22. For the sake of completeness, I am persuaded by Mr Shilliday's submission that the contracts submitted were incomplete and therefore were insufficient to satisfy the requirements of paragraph 41-SD and to demonstrate that the Appellants were actively trading. In relation to the business cards these clearly were before the Respondent and considered in the refusal letter. I find that these documents and the business plan were insufficient evidence to show that the Appellants were actively trading.
23. Accordingly, I find that there was no material error of law in the First-tier Tribunal determination dated 28th August 2014 and I dismiss the Appellants' appeals. The determination of the First-tier Tribunal shall stand.

Notice of Decision

The Appellants' appeals are dismissed.

No anonymity direction is made.

Signed

Date 17th February 2015

Appeal Numbers: IA/11232/2014
IA/11239/2014
IA/11262/2014
IA/11263/2014
IA/11264/2014
IA/11265/2014

Deputy Upper Tribunal Judge Frances

Appeal Numbers: IA/11232/2014
IA/11239/2014
IA/11262/2014
IA/11263/2014
IA/11264/2014
IA/11265/2014

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeals and therefore there can be no fee award.

Signed

Date 17th February 2015

Deputy Upper Tribunal Judge Frances