



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/11452/2014

THE IMMIGRATION ACTS

Heard at Field House
On 26 March 2015

Decision & Reasons Promulgated
On 20 April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE APPEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RAGIL ANTHOORVALAPPIL RAJAN
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:

For the Appellant: Mr S. Walker, Home Office Presenting Officer.

For the Respondent: Mr A. Khan, Counsel.

DECISION AND REASONS

1. This is a respondent appeal but I shall henceforth refer to the parties in the original terms detailed in the decision of Judge of the First-tier Tribunal Callow following a hearing on 13 October 2014.
2. No application has been made for anonymity in these proceedings and there is no reason why such an order should be made.

3. The appellant is a citizen of India born on 1 January 1988. He appealed against a decision of the respondent dated 18 February 2014 refusing him leave to remain as a Tier 1 (Entrepreneur) Migrant and the further decision to remove him under Section 47 of the Immigration, Asylum and Nationality Act 2006.
4. The appellant appealed that decision and, following a hearing at Taylor House, the judge, in a decision promulgated on 11 December 2014, allowed the appellant's appeal.
5. The respondent sought permission to appeal. This was granted by Judge of the First-tier Tribunal Osborne on 30 January 2015. His reasons for so doing were:-
 - "1. The grounds seek permission to appeal a decision and reasons of First-tier Tribunal Judge Callow who in a decision and reasons promulgated 11 December 2014 allowed the Appellant's appeal against the Respondent's decision to refuse leave to remain as a Tier 1 (Entrepreneur) Migrant under the Immigration Rules.
 2. The grounds assert that the Judge erred in law in that inadequate reasons were provided as to how the final determination was reached. The reasons for refusal were cited but no findings of fact have been made on (iii), erroneously referred to as (ii), of the reasons for refusal. The Judge failed to give sufficient reasons for the overall findings.
 3. In an otherwise careful and detailed decision and reasons the Judge set out the pertinent issues, law and evidence relating to the facts of the appeal. In appeals of this nature it is the task of the Judge to make findings of fact on the basis of the evidence and to provide adequately clear reasons for those findings. In relation to the rest of the decision and reasons the Judge limits his findings of fact to three paragraphs (11, 12 and 13). It is at least arguable that the Judge failed to provide adequate reasons for the findings made in each of paragraphs 12 and 13 and that the arguably inadequate reasons amount to an arguable error of law.
 4. As this arguable error of law has been identified, all the issues raised in the grounds are arguable."
6. Thus the appeal gave before me today.
7. Mr Walker submitted that the judge materially erred in failing to give adequate reasons for his decision. The judge concluded that the application should have succeeded under the Immigration Rules but has inadequately explained how his final decision was arrived at. The reasons for refusal have been cited but the points therein have not been engaged with and no findings of fact have been made in respect of certain matters. There has been a failure to give sufficient reasons for the overall findings and that the judge's decision should, as a consequence, be set aside.

8. Mr Khan argued that the judge had considered the totality of issues within the appeal and had come to conclusions that were open to be made on the evidence, having found that the appellant was plausible.
9. The judge's decision runs to seven pages and thirteen paragraphs. However, the first five and a half pages are effectively a recital of the material that was before the judge and it is only, in less than half a page, that the judge gives his decision at paragraphs 11, 12 and 13. They do not engage with the reasons for refusal and so unfortunately the respondent is deprived of any understanding as to why the appeal has been allowed. In short, for the reasons asserted there are inadequate reasons provided by the judge for coming to the conclusion that he did.
10. The impact of this is that the respondent has been deprived of a fair hearing within the First-tier Tribunal. Accordingly, I find that the decision of the First-tier Tribunal contains errors of law and has to be set aside in its entirety.
11. The making of the decision in the First-tier Tribunal involved the making of an error on a point of law and I consider in the circumstances that the appeal should be remitted to the First-tier Tribunal to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice 7.2(b), before any judge aside from Judge Callow.
12. No anonymity order is made.

Signed

Date 13 April 2015

Deputy Upper Tribunal Judge Appleyard