



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

Appeal Numbers: IA/17097/2014
IA/17104/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8th January 2015**

**Decision & Reasons Promulgated
On 21st January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR MUHAMMAD ASIM (FIRST APPELLANT)
MR MUHAMMAD ALI (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr D Balroop, Counsel

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Pakistan born respectively on 13th July 1986 and 2nd July 1982. They had submitted a combined application for leave to remain in the United Kingdom as Tier 1 (Entrepreneur) Migrants under the points-based system (PBS) and for a biometric residence permit (BRP). Their immigration histories were

slightly different. The first Appellant Mr Asim was granted leave to enter the United Kingdom on 13th September 2011 and the second Appellant Mr Ali on 27th January 2010. Thereafter their leaves were extended as initially Tier 4 (General) Students and then as Tier 1 (Post-Study Work) Migrants. They have never overstayed their visas and their applications were made in time.

2. By Notices of Refusal dated respectively 25th March 2014 and 26th March 2014 their applications were refused. For the purpose of this appeal the content of those Notice of Refusals are relevant. The Appellants had been separately interviewed and findings made by the interviewing officer in the Notice of Refusal as to the credibility of the money available for investment, the Appellants' business plans and market research, and their previous educational and business experience.
3. The Appellants appealed and the appeal came before Judge of the First-tier Tribunal Majid sitting at Taylor House on 1st October 2014. In a determination promulgated on 9th October 2014 the Appellants' appeal was allowed under the Immigration Rules.
4. On 15th October 2014 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. Those grounds acknowledge that whilst the issue was narrow and that whilst the judge is required to give reasons and they need not be lengthy it was submitted that the reasoning in the determination was inadequate. They contended that paragraph 16 of the determination appeared to be the only paragraph where reasons were proffered and it was unclear as to how the requirements of a complex Rule had been fulfilled. It was further unclear as to why the judge found the Appellants to be credible and the business genuine. The grounds noted that the Appellants had been awarded no points under Appendix A by the Respondent because she did not accept the genuineness of the business. That being the case the judge should have turned his mind as to whether the documents before him met the requirements of paragraphs 41 and 41-SD of Appendix A.
5. On 24th November 2014 First-tier Tribunal Judge Parkes granted permission to appeal. Judge Parkes concluded that the determination was short on reasoning and explanation and the grounds were arguable.
6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. This is an appeal by the Secretary of State. For the purpose of continuity throughout the proceedings the Secretary of State is referred to herein as the Respondent and Mr Asim and Mr Ali as the Appellants. The Appellants appear by their instructed Counsel Mr Balroop. The Secretary of State appears by her Home Office Presenting Officer Mr Bramble.

Submissions and Discussion

7. Mr Bramble takes me to the two Notices of Refusal. He acknowledges that the Appellants were interviewed on different days and that there are slight variations in the conclusions reached in the Notices of Refusal but the issues with regard to the

credit ability of the Appellants to become directors and invest money and the viability of their business plans, market research and business experience were all raised substantially in the Notices of Refusal. He submits that the determination of the First-tier Tribunal is short in the extreme and that only the briefest findings of fact are made at paragraph 13 and that the First-tier Tribunal Judge has failed to grapple with the refusal and to give logical and sensible reasons in response to the refusal of the Secretary of State to award points to the Appellants under Appendix A and as such there is a material error of law and that the decision should be set aside and remitted to the First-tier Tribunal for rehearing.

8. Mr Balroop submits that there is a two tier test that the Tribunal needed to consider namely the reasons for refusal and what was before the court and thereafter what steps should have been taken by the Immigration Judge. He points out that the basis of refusal is under paragraph 245DD(h) and (i) and that the approach adopted regarding the credibility of funds is a genuineness test and that the Secretary of State found Mr Asim credible and Mr Ali not credible following their interviews. He takes me to Judge Majid's determination pointing out that at paragraph 6 the judge has indicated he has considered all the documents and taken into account the oral evidence tendered to the Tribunal. He takes me to paragraph 10 of the determination and the contention that evidence has been produced to show that the Appellants have £50,000 in their account to be deployed in the business. He emphasises that the money is not third parties' funds but available to the Appellants. He submits that with Mr Asim having already been found credible by the Secretary of State that whilst acknowledging that the determination is brief that the judge has touched on all relevant points and found Mr Ali credible. He submits that the judge has looked at all the issues, read them and that the only issue outstanding was whether they are genuine entrepreneurs and that the judge was entitled to make the findings that he has and that there is no material error of law disclosed within the determination.
9. Mr Bramble responds by pointing out that it is incumbent upon the judge to go through the Notice of Refusal letter not just the financial aspect but points out that there are several issues e.g. the credibility of market research which just have not been looked at by the judge and that he does not engage with the reasonableness of the business plan. He submits that without a proper analysis it is quite impossible for the judge to have made the findings that he has.
10. Mr Balroop responds pointing out that he notes that the evidence regarding the business plans were prepared by an accountant and that the judge had evidence regarding same which is referred to at paragraph 7 in the determination. He reminds me that the judge heard evidence and found that Mr Ali was credible and therefore submits that there is a finding overall that both Appellants are credible and that the appeal should be dismissed.

The Law

11. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into

account immaterial consideration, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

12. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

13. It is important to emphasise that I am not rehearing this matter. I am purely considering whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. I acknowledge that it is not a requirement for every document or piece of evidence to be referred to by a First-tier Tribunal Judge but it is incumbent upon a judge to make findings and to give reasons for his findings. It is quite permissible for a judge to state that he has read all the documents and heard all the evidence providing he then goes on to analyse the relevant factors and to make findings. That has not taken place in this case. All the judge had done is indicated that he finds Mr Ali to be credible (for reasons which themselves are not easily understood). He has not gone on to analyse any of the major issues that were raised before the Tribunal. It is not sufficient as Mr Balroop valiantly submits merely to suggest that the judge has considered all factors in reaching his determination. He may have done so but he has to give reasons.
14. In this instant case unlike many applications by entrepreneurial migrants there is not a challenge of the relevant funds being those of a third party. What is challenged is set out in considerable detail in the Notices of Refusal. They include in the case of Mr Ali whether the money deposited is for the purpose of investment in the business. Generally they address the areas of the seeming complete lack of failure of the Appellants to have carried out market research, to have provided a sustainable business plan and to have provided a detailed analysis of the business contracts that they hope to embrace. Whilst the previous educational experience is accepted of the Appellants their lack of business experience is challenged and whilst I acknowledge that it would be harsh to criticise an Appellant who has had no previous opportunity

to obtain business experience merely because he has not had it that has to be linked to the overall viability of the business proposal.

15. I emphasise that I am not considering these issues before me today. It is possible that they may be fully explained, that the business proposal is both viable and well thought through. If that is the case it is for the Appellants to show that to the Tribunal. That has been made abundantly clear by the Notices of Refusal. Those issues are not addressed by the First-tier Tribunal Judge. As such the judge has failed completely to consider the refusal to award points under the heading Attributes: Appendix A. The failure to do so constitutes a material error of law. Failure to look at the whole fabric of the application by the Immigration Judge is wrong and this is the approach that has been adopted by the Secretary of State quite properly. Further there is no indication as to whether or not the documents before the Immigration Judge met the requirements at paragraph 41 and 41-SD of Appendix A of the Immigration Rules and there is no analysis whatsoever of this documentation. In all the determination fails to produce any detailed findings and as such constitutes a material error of law.
16. I would emphasise that is not to say that the Appellants may not succeed. What they have to do however is to show that they meet the requirements of the Immigration Rules. In such circumstances the correct approach is to set aside the decision of the First-tier Tribunal and to remit this matter to be heard on the first available date 28 days hence at Taylor House before any other Immigration Judge than Immigration Judge Majid. It may be that the Appellants need to get their house in order. To that end I attach a direction with regard to the finding of an up-to-date bundle.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses a material error of law and is set aside. The matter is remitted for rehearing at Taylor House on the first available date 28 days hence before any other Immigration Judge other than Immigration Judge Majid with an ELH of two hours.

That it be directed that the Appellants do serve the Secretary of State and lodge at the Tribunal an up-to-date bundle of documents upon which they seek to rely in support of their application at least seven days prehearing.

No anonymity direction is made.

Signed

Date 19/01/2015

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 19/01/2015

Deputy Upper Tribunal Judge D N Harris