



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

Appeal Number: IA/19129/2014  
IA/19128/2014  
& IA/19204/2014

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 15 September 2015**

**Determination issued  
On 17 September 2015**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**RASHID ALI  
SADIA AHMED  
MUDASIR MEHMOOD**

Respondents

**Representation:**

For the Appellant: Mr A Mullen, Senior Home Office Presenting Officer

For the Respondents: Mr S McWilliams, of Morton Fraser, Solicitors

**DETERMINATION AND REASONS**

1. The parties are as described above, but the rest of this determination refers to them as they were in the First-tier Tribunal.
2. The SSHD appeals against a determination by First-tier Tribunal Judge Martins, promulgated on 13 February 2015, allowing the appellants'

appeals against refusal of applications as tier 1 entrepreneur migrants (first and third appellants) and as a dependant (second appellant).

3. The first ground of appeal is that the judge erred by taking account of evidence which had not been before the respondent, contrary to section 85A of the 2002 Act. In a response, the appellants accept that there was such an error, but say that it was not material.
4. The second ground of appeal is inadequacy of reasoning, through failure to deal with the issues raised by the respondent. In their response, the appellants say that adequate reasons appear at paragraphs 60 and 61 of the determination.
5. Mr Mullen accepted that the second ground was not a strong one, as the judge had set out clearly the oral evidence given by the appellants and said why she found them to be reliable witnesses. In my view that was a correct concession.
6. Mr Mullen argued that paragraph 62 made it plain that the decision took into account evidence which ought not to have been considered, and the final conclusion at paragraph 63 was expressly reached "on all the evidence". He said that the evidence wrongly admitted was set out in some detail earlier in the determination, so the error could not be disentangled from the rest, and it could not be said that the same outcome would have been reached.
7. Mr McWilliams submitted that although the concluding paragraphs 60-62 did mention the documents wrongly admitted, and the findings did bear to be reached "on all the evidence", the specific points which the judge recorded were that she had the opportunity of hearing and observing the appellants give evidence; they did so in a straightforward, helpful and impressive manner; they were confident and gave clear explanations of what their business involved; and so on. It was not disputed that the judge was entitled to take that oral evidence into account. In contrast, she said nothing specific about what she derived from the additional documents. The oral evidence was plainly the critical factor in discharging the burden of proof. The result would have been the same.
8. I indicated that I preferred the submissions for the respondent, for the reasons given. The error was not material.
9. I record one point, although it does not affect the outcome. Just prior to the hearing I referred to section 85A and noticed that it appears to have been repealed on 20 October 2014, prior to the hearing in the First-tier Tribunal. There are saving provisions but they do not apparently bear on this case. Neither party had any submission to make on the significance of this point. It appears that any restrictions on the evidence for the judge to consider were not to be derived from section 85A.
10. The determination of the First-tier Tribunal shall stand.

11. No anonymity direction has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

Upper Tribunal Judge Macleman

15 September 2015