



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/19182/2014  
IA/19196/2014  
IA/19193/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 10 November 2015

Decision & Reasons Promulgated  
On 20 November 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

ASIF HUSSAIN  
SANIA KHALIL  
REHMAN ASIF  
(NO ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation**

For the Appellants: Ms S. Jones, Counsel instructed by Farani Javid Taylor Solicitors  
For the Respondent: Mr N. Bramble, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. In a decision promulgated on 17 February 2015, First-tier Tribunal (“FtT”) Judge Bart-Stewart dismissed the appellants’ appeal against the decision of the respondent, dated 16 April 2014, to refuse to vary their leave to remain and remove them from the UK.

2. The appellants are citizens of Pakistan. The first appellant was born on 1 June 1984. The second appellant, his wife, was born on 26 August 1991. The third appellant is their son who was born on 14 October 2012.
3. The first appellant entered the UK on 18 September 2008 with entry clearance as a student. He obtained variations of his leave as a student and thereafter was granted leave to remain as Tier 1 (Post Study) Migrant until 21 October 2013. On 18 October 2013 he applied for leave to remain as a Tier 1 (Entrepreneur) Migrant under the points-based system. The second and third appellants applied for leave to remain as his dependents.
4. The respondent refused the first appellants' application under Paragraph 245DD(k) of the Immigration Rules; that is, on the ground that she was not satisfied as to the genuineness of the application. The respondent considered that the first appellant did not meet the requirements of Paragraph 245DD(h) of the Immigration Rules taking into consideration the factors listed in paragraph 245DD(i). The key findings of the respondent were:
  - a. The first appellant was required to have access to at least £50,000 to invest in a business. Although he provided a bank statement showing sufficient funds, the respondent did not accept the viability and credibility of the source of the money.
  - b. The respondent was of the view that the first appellant had plagiarised a large part of his business plan and had failed to adequately explain his business and therefore the respondent questioned the viability and credibility of the business plan and market research.
5. The appellants appealed and their appeal was heard by FtT Judge Bart-Stewart. The FtT dismissed the appellants' appeal. The judge did not find it credible that the first appellant would have been able to accumulate £35,000 during the time he was in the UK (he claimed to have received £15,000 as wedding money and saved £35,000). The FtT noted that at the beginning of the statement period on 10 September 2013 the balance was just over £10,000 and on 16 October it was over £50,000 and there was no documentary evidence to show how this money was earned and saved. The FtT concluded that the first appellant had failed to show he genuinely intended to invest the money in the business.
6. The FtT also considered the viability and credibility of the business as set out in the business plan. It stated that the 'financials' made no sense and found that parts of the business plan had been copied without any attempt to vary the wording. Moreover, the judge found that the first appellant's answers to questions in interview about his market research caused doubt as to whether he had properly researched the proposed business. The FtT concluded that the first appellant had failed to discharge the burden of proof that he is a genuine entrepreneur. Article 8 was also considered and it was found that removal of the appellants would not be disproportionate.

7. The grounds of appeal submit that the FtT erred in law because matters such as the source of funds and the business plan are not requirements in and of themselves under the Rules and the strict factual requirements under the points-based system were met.
8. The grounds also submit that the judge failed to take into account that the business had already been established when assessing the genuineness of the application.
9. Permission to appeal was granted by Upper Tribunal Judge Blum. Judge Blum stated that the FtT was entitled to consider the absence of reliable evidence as to the origin of the funds available to the first appellant and the evidence of the business plan being plagiarised when considering the credibility of the business. However, he found it was arguable that the FtT had failed to consider the fact that the business was already established.
10. At the error of law hearing Ms Jones, on behalf of the appellants, submitted that the FtT, in assessing the genuineness of the first appellant's application, had failed to consider the evidence before it showing that, and the extent to which, the business was already operating at the time the application was made to the respondent. She contended that this evidence showed that the first appellant had indeed set up a genuine business that had customers, a reasonable turnover and a profit. Mr Bramble argued that there was little in the way of evidence showing the business operating successfully and that the evidence of the first appellant's income from prior to the business being incorporated was not relevant.

### Consideration

11. The appellants' application was made on 18 October 2014. The FtT could only take into account evidence submitted at that time unless it was adduced to prove a document was genuine or valid (see, for example, *Ahmed and Another (PBS: admissible evidence)* [2014] UKUT 00365 (IAC)).
12. The documents submitted by the first appellant with his application included:
  - a. Companies House Register Information showing his company being incorporated on 16 September 2013 with the first appellant as sole director and the certificate of incorporation.
  - b. An undated but signed contract between the first appellant's company and another company for provision of services to the latter from October 2013 until October 2015 paying £1,450 a month. The contract refers to the first appellant's company providing "marketing services and staff". The contract gives very little specificity as to what services will be delivered in return for the regular remuneration but refers to preparing monthly marketing and sales forecasts, weekly marketing reports, operational review reports and sales reports.
  - c. An undated but signed contract with another third party company. The contract is virtually identical to the previously described contract, whereby the

first appellant's company will provide "marketing services and staff" but in this contract the period of performance is April 2014 until March 2015 and the monthly fee is £1,200.

- d. A document from HMRC confirming the appellant's company has been notified to them by Companies House.
  - e. The first appellant's tax return as a self employed person for the tax year ending 5 April 2013, showing turnover of £36,010, total allowable expenses of £22,309 and total taxable profits of £13,701, with total tax paid of £1,667.84.
13. Taken together, these documents show, on the balance of probabilities, that the first appellant was operating a business at the time of his application and that the business in the previous tax year had made a reasonable turnover (over £36,000) and modest profit (£13,701). The fact that the legal status of the business changed in September 2013 does not negate that this was an ongoing business. Paragraph 245D of the Immigration Rules defines "business" as a "sole trader, partnership or company registered in the UK" and therefore both before and after incorporating the appellant was operating his business.
  14. Paragraph 245DD(h)(i) of the Immigration Rules is drafted in the alternative. It provides that the respondent must be satisfied that the applicant genuinely either (1) intends and is able to establish, take over or become a director of one or more businesses in the UK within the next six months; or (2) has established, taken over or become a director of one or more businesses in the UK and continues to operate that business or businesses.
  15. The FtT approached its consideration of the viability and credibility of the business from the perspective of it being a mere proposal rather than an operating business. This was an error of law, as the FtT's starting point should have been that the business was already up and running; that is, the second of the two alternatives under 245DD(h)(i). The error was not, however, material, for the reasons explained below.
  16. Under Paragraph 245DD(h)(ii) and (iii) of the Rules, the Secretary of State must be satisfied that (a) the appellant genuinely intends to invest £50,000 in the business; (b) this money is genuinely available to the appellant; and (c) the money will remain available until it is spent for the purposes of the businesses.
  17. At paragraph [17] the FtT set out the reasons it did not find the first appellant genuinely intended to invest £50,000 in his business. It noted that as of 10 September 2013 the sum in the first appellant's bank account was £10,136.11 and this increased to £50,099.53 on 16 October 2013 without there being an adequate explanation for its source. The FtT considered the first appellant's work history since coming to the UK and his capacity to accumulate sufficient funds and reached the conclusion that it was not credible that he had saved as much as he claimed. These findings were open to the FtT which, based on the evidence before it, was entitled to conclude that the

first appellant had failed to show he genuinely intended to invest £50,000 in the business.

18. To succeed, the first appellant was required show, inter alia, that he met the requirements of both paragraph 245DD(h)(i) and paragraphs 245DD(h)(ii) and (iii); that is, the Secretary of State must be satisfied that the appellant genuinely intends both to establish or continue operating a business and invest £50,000 into that business. These requirements are cumulative, ie the first appellant must show he satisfies both. The FtT found that he could not satisfy either. For the reasons explained above, I find that the FtT erred in relation to paragraph 245DD(h)(i), as the judge failed to take into account that the first appellant was continuing to operate a business he had established and so could meet the requirements of 245DD(h)(i)(2), but not in respect of paragraph 245DD(h)(ii), where it was open to the judge to find that the appellant had not shown a genuine intention to invest £50,000 in the business. The finding in respect of the £50,000 was a sufficient basis to dismiss the appeal and therefore the error in relation to the operation of the business was not material to the outcome.

### **Decision**

- a. The appeal is dismissed.
- b. The decision of the First-tier Tribunal did not involve the making of a material error of law and shall stand.
- c. No anonymity order is made.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 19 November 2015