



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

Appeal Numbers: IA/19422/2014
IA/19432/2014
IA/19427/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 15th May 2015**

**Decision & Reasons Promulgated
On 26th May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

**MR IMRAN SHARIFF
JUNAID ALI SHAIKH
MRS SHEERIN TAJ
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

First and second Appellants: In person
Third Appellant: No attendance
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. These are the appeals of Mr Junaid Ali Shaikh, born 25 December 1984, Mr Imran Shariff, born 6 December 1986 and Mrs Sheerin Taj, born 22 July 1988. The First

Appellant is a citizen of Pakistan. The Second and Third Appellants are citizens of India. The Second and Third Appellants are husband and wife.

2. On 6th February 2014 the First and Second Appellants made a combined application for leave to remain in the United Kingdom as Tier 1 (Entrepreneur) Migrants under the points-based system and for biometric residence permits. The Third Appellant made application in line with her husband.
3. On 16th April 2014 decisions were made to refuse the applications principally on the basis that letters, from the Habib Bank, in respect of each of the First and Second Appellants could not be verified. The letters are dated 31st January 2014. The appellants and each of them appealed and their appeals were heard on 19th November 2014 by Judge of the First-tier Tribunal Horvath. She dismissed each of the appeals. Not content with the decisions made, by Notice dated 16th December 2014 the Appellants and each of them made application for permission to appeal to the Upper Tribunal. On 25th January 2015 Judge of the First-tier Tribunal Ford granted permission. Thus the matter comes before me.
4. There was a preliminary matter. I was quite properly informed that the Third Appellant, Mrs Taj, had returned to India. All parties agreed that the effect of that, having regard to Section 104 of the Nationality, Immigration and Asylum Act 2002 Act was that the appeal was to be treated as abandoned in her case. The appeals in respect of the first and second Appellants, however, remain live.
5. The Appellants represented themselves and I have to say that they have done so commendably well. Their case notwithstanding the complexity of the determination produced in the First-tier Tribunal is, after their careful distillation of the essential facts really quite simple.
6. The letter from the Habib Bank in respect of Mr Shaikh makes plain that the bank account is with respect to his own funds. The letter from Habib Bank with respect to Mr Shariff makes plain that the funds are those of Mr Shaikh.
7. The Secretary of State's correspondence relied upon in making her decision reads as follows (email dated 25th March 2014)

“Madam

As discussed, we have investigated and warning letters have been issued to the delinquent staff involved in issuing third party sponsorship letters. We have also instructed our Faisalabad Bank branches not to issue such types of certificate in future. Furthermore, we would like to inform you that all third party sponsorship letters issued by Faisalabad branches will not be verified by us.

Assuring you of our best cooperation at all times to come.

Regards.”
8. In refusing the applications the Secretary of State not only refused them on the basis that the documents specified under Appendix A of the Immigration Rules could not

be verified, but also because, having considered her own flexibility policy, and in particular 245AA, was of the view that even if she exercised her discretion under the flexibility policy she would have arrived at the same decision.

9. The Appellants submit that the Secretary of State had misunderstood the effect of the email because the email related only to *third party* sponsorship letters. The letter with respect to Mr Shaikh on any view was not a third party letter and by extension if the letter with respect to Mr Shaikh was genuine then as I have already said, so too was that of Mr Shariff since it was by reference to the same funds, and as Mr Wilding rightly points out, the second letter was not really a third party letter either, but “inter-party”.
10. When one reads the determination of the First-tier Tribunal it is clear that the judge had misunderstood the basis upon which the appeal was brought and he erred in the same manner as the Secretary of State. I find that there is a material error of law in the determination of the First-tier Tribunal and Mr Wilding, in fairness to him, very wisely and fairly, accepted that he could not really resist the appeal that was brought.
11. The question then is what to do given the material error of law. It is open to me to remake the decision. The only basis upon which the refusal was made was that the bank statements could not be verified. In fact there could have been, or least there is no sufficient evidence to say that he could not have been. The Secretary of State had the documentation from the bank. There is no suggestion of any forgery or any fraud. In the circumstances the proper course, and one which again Mr Wilding quite properly did not suggest that I should not adopt, is that the appeals should in each case, save for the Third Appellant, be allowed.

Notice of Decision

12. The decision of the First-tier Tribunal is set aside and remade such that the appeals of Mr Imran Shariff and Mr Junaid Ali Shaikh are allowed. The appeal of Mrs Sheerin Taj is treated as abandoned.

Fee Award

13. Having allowed the appeals it seems to me only proper that in each case a fee award should be made and because it seems to me that there was simply a misunderstanding on the part of the Secretary of State and no other basis for refusing the applications when everything else was in order, a full fee award in each case shall be made in the sum of £140 in respect of each of the First and Second Appellants.

Signed

Date

Deputy Upper Tribunal Judge Zucker