IAC-BH-PMP-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/20076/2013
IA/20606/2013
IA/20615/2013
IA/20619/2013
IA/20622/2013

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke
On 12th January 2015

Decision & Reasons Promulgated
On 4th March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

FARKHANDA JABEEN First Appellant
TANZIL UR REHMAN Second Appellant
JAHAN ZEB Third Appellant
SADIA JAHANZEB Fourth Appellant
WANIYA JABEEN Fifth Appellant

(ANONYMITY DIRECTION NOT MADE)

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr I Khan, Solicitor, of Ikon Law Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. On 24th December 2013 Judge of the First-tier Tribunal J M Lewis gave permission to the appellants to appeal against the decision of Judge of the First-tier Tribunal Sangha in which he dismissed the appeals against the decisions of the respondent to refuse leave to remain as Tier 1 (Entrepreneur) Migrants in respect of the first and third appellants. The second appellant's appeal as dependant of the first appellant was also dismissed as were the appeals by the fourth and fifth appellants who are similarly dependants of the third appellant.

2. In granting permission, Judge Lewis noted that the grounds of application contended that the judge had not sufficiently considered the issue of evidential flexibility in respect of specified documents submitted by the first and third appellants in support of their joint entrepreneur application.

3. This matter first came before me in the Upper Tribunal on 8th October 2014 when Mr Khan submitted a skeleton argument in which an additional argument in relation to specified documents was raised. It was argued that the respondent had misunderstood and misapplied the documentary requirements set out in paragraph 41-SD of Appendix A of the Immigration Rules. In summary, the skeleton contended that the specific requirements for a letter from a financial institution and a legal representative as specified in sub-paragraphs (c)(i) and (d)(ii) of paragraph 41-SD were only relevant if the applicant was applying using money from a third party. But this was not the case as the applicants were relying on their own personal funds in the United Kingdom in relation to which they had provided the necessary bank statements in their personal names.

4. Mr McVeety indicated that he needed more time to consider the fresh issue raised in the skeleton which had not been seen by him until the day of the hearing. He was not prepared to withdraw the refusal decisions for consideration under the relevant Rules. However he did agree that, if given more time to consider the new issue, the respondent would also consider whether or not it could be agreed that the determination showed an error such that the decision could be re-made by allowing it.

5. In the circumstances I agreed to adjourn the matter on the basis that the point raised in the skeleton was *Robinson* obvious. I also made an appropriate direction for the respondent to consider the skeleton argument and to notify all parties of the results of its reconsideration of the application at least five days before the adjourned hearing date.

6. At the resumed hearing before me on 12th January 2015 Mr McVeety conceded that the respondent had not complied with the direction given but indicated that, even if the application of the Rules had been wrong, the bank statements submitted by the first and third appellants had to comply with the requirements of sub-paragraph (c)(ii)(4) of paragraph 41-SD specifying that bank statements should show an account in both names for an entrepreneurial team and not in the name of a business or third party. Thus, he argued, the error in consideration of the wrong Rule was not material because the first and third appellants could not comply with the Rules in any event.

Error on a Point of Law

7. After considering the matter for a few moments, particularly in the light of the skeleton argument, I indicated that I was satisfied that the decision of the First-tier Judge showed an error on a point of law such that it should be re-made. That was because it was evident that the judge had been misled by the respondent's reliance, in the refusal letter of 15th May 2013, on the alleged requirement for a bank letter and a legal representative's letter when, as both representatives agreed, such documents were only relevant to an application involving funding from a third party as specified in the various provisions of paragraph 41-SD(d) of Appendix A. Although Mr McVeety argued that the error was not material because bank statements had been provided which also did not meet the requirements of the Rules, it is evident that matter was not considered by the judge and so it could not be assumed that the judge would have made a decision on that matter which favoured the respondent.

Re-Making the Decision

8. Mr Khan indicated that the appellants continued to rely upon the skeleton he had submitted and agreed that the issue was now one of interpretation as to the requirement of the Rules in respect of the bank accounts submitted by the first and third appellants. He argued that the requirement in sub-paragraph (c)(ii)(4) of 41-SD did not specify a joint account. He asked me to conclude that the Rule could mean two accounts in separate names. Further, he argued that, even if he was wrong in that submission, then the respondent should have written to the appellants, under the flexibility policy set out in paragraph 245AA of the Rules, for further information. The appellants could simply have opened a joint account if the position had been made clear to them.

9. Mr McVeety argued that there was no ambiguity in the Rule and that the flexibility policy could not apply where the document itself did not exist. The purpose of the Rule was to ensure that a team had joint funds available.

10. In conclusion Mr Khan emphasised that the required sum of £50,000 had been available and the Rule could be interpreted on the basis that a joint account was not required.

Conclusions

11. Although the respondent plainly made an error in relation to the documentary requirements set out in paragraph 41-SD of Appendix A of the Immigration Rules on the basis argued by Mr Khan in his skeleton argument, the matter cannot be left there. The respondent is entitled to look at the applications by the first and third appellants against all the requirements of the Rules despite the error made and in response to the amended grounds.

12. Although the first and third appellants maintain that they provided the required bank statements, the Rules do not allow for that conclusion. Sub-paragraph (c)(ii)(4) of paragraph 41-SD states in relation to the recent bank statements required to confirm the amount of investment money available:

> "(4) the account must be in the applicant's own name only (or both names for an entrepreneurial team), not in the name of a business or third party;"

13. In relation to that paragraph Mr Khan argues that it does not make a requirement for joint accounts. I disagree. Giving the paragraph its ordinary meaning and on the basis that the first and third appellants are clearly an entrepreneurial team (having both applied together on the same day in relation to the same business) an account in joint names was evidently required. This was not provided in support of the applications made. For example, the statement submitted by the first appellant for an account with Nat West Bank is in her name only and shows only half of the necessary funds held in the account on 5th March 2013 (although the funds had been completely withdrawn by 6th March 2013). Without the total funds of £50,000 in an account in the names of both entrepreneurial applicants it would not have been shown to the respondent's satisfaction that the total of funds was available. Thus, the application had to fail in any event.

14. In reaching the above conclusion I have taken into consideration Mr Khan's argument that the respondent should have written to each applicant to point out the requirement for an account in both names. The appellant relies upon the documentary policy set out in paragraph 245AA of the Immigration Rule in force at the time of the application. The type of documents which the respondent would request after the application are those set out in sub-paragraph (b) of the rule. They are: a document missing from a sequence; a document in the wrong format; or a document that is a copy or not an original. It is also stated that the respondent will not request a document where one which is specified has not been submitted. The bank statements in this appeal which are in sole names are simply the wrong documents and did not require the respondent to write for fresh ones. They are not documents in the categories set out in sub-paragraph (b). Thus, even if the respondent had considered the correct Rule in relation to the documents required, a study of the bank statements would immediately have shown that they did not meet the requirements of the Rules as they were the wrong documents. There would have been no requirement to write to the first and third appellants about that.

15. For the reasons I have given the appeal on immigration grounds is dismissed.

16. Human rights issues were not raised at the hearing before the First-tier Tribunal or before me.

Notice of Decision

The appeal is dismissed on immigration grounds.

Anonymity

Anonymity was not requested nor do I consider it appropriate.

Signed Date **4th March 2015**

Deputy Upper Tribunal Judge Garratt

TO THE RESPONDENT
FEE AWARD

As I have dismissed this appeal there can be no fees order.

Signed Date **4th March 2015**

Deputy Upper Tribunal Judge Garratt