



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/20326/2014

THE IMMIGRATION ACTS

Heard at Field House
On 12th August 2015

Decision & Reasons Promulgated
On 30th September 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD
UPPER TRIBUNAL JUDGE KNOWLES

Between

SUFAID KHAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bridock - Counsel

For the Respondent: Mr Jarvis - Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Sufaid Khan, a citizen of Pakistan born 7th February 1984. He appeals against the determination of First-tier Tribunal Judge Gillespie promulgated on 17th December 2014 dismissing his appeal against the decision of the Respondent made on 24th April 2014 to refuse further leave to remain in the United Kingdom as a

Tier 1 (Entrepreneur) Migrant and to give directions for his removal from the United Kingdom.

2. On 2nd February 2015 First-tier Tribunal Judge Pooler refused permission to appeal. He noted that it was asserted in the grounds seeking permission that Judge Gillespie erred in law in reaching wrong findings on the Appellant's business plan, wrongly applying the Immigration Rules, failing to consider that discretion should have been exercised differently and failing to consider the Article 8 appeal. Judge Pooler said that it had not been submitted in the Grounds of Appeal that discretion should have been exercised differently and found that none of the grounds disclosed an arguable material error of law. The Appellant applied to the Upper Tribunal for permission to appeal and the appeal came before us to determine whether or not there was a material error of law in the decision of Judge Gillespie.
3. It is submitted in the Grounds of Appeal provided to the Upper Tribunal that the Judge erred in concluding that the Appellant was not a genuine a Tier 1 (Entrepreneur) Migrant in that his reasoning is inconsistent with the evidence provided by the Appellant. The Judge is not an expert on the motor trade and fails to give adequate reasons for his findings on the viability of the Appellant's business. He did not understand the business plan and proposal. It was not open to him to make a decision that the proposed business would not require the investment of anything like £50,000. There was no expert report. His analysis of the Appellant's business was not well-reasoned and was outwith his capacity as a Judge. The Appellant had explained that the nature of his business was also with other businesses where they would require a fleet of cars totalling up to £45,000 but this was not recorded by the Judge in his determination.
4. The Secretary of State refused the Appellant's application because she was not satisfied as to the genuineness of it. The Appellant had been interviewed and had said that his business would be sourcing and importing used motor vehicles or vehicle parts from various countries throughout the world and supplying these to order of clients in the United Kingdom. The initial client was said to be a company called London Global Solutions Limited which according to investigations by the Respondent is either not trading or trading to only a very limited extent and had done since August 2011. The Secretary of State noted that the contract with London Global Solutions Limited does not contain information that you would expect from a genuine contract such as the amount that would be charged etc. There was no evidence that the Appellant had provided any of the services he claimed that he would be providing. Given that he has no evidence of trading and no experience in purchasing vehicles and vehicle goods it raises the question of why they would make a contract with the Appellant in the first place. The Secretary of State said that the answers the Appellant gave at the interview about market research lacked credibility and were vague and lacking in any kind of detail. She took the view that he had conducted little or no market research. She said it is not credible that a person who was a genuine and credible entrepreneur would have remained unemployed for two years and then decide three months before their visa expired to create a company and then spend little or no time developing the business. He was unable to offer detailed answers about the business plan and market research. The Secretary of State

noted that the answers given by the Appellant were vague and generalised. He made no mention of who his business links are and appeared to have no idea of the process of buying and importing cars and parts. He had not shown that he had the skills to do what he wanted to do in the business. There was no evidence that he had attended trade fairs as claimed. He said that he would get local garages to do repair work but had no quotations from them. Given that the advert said that *he* would do the repair work the Secretary of State said that the adverts appear to be neither viable nor credible but appear to have been created simply to support the application for leave as an entrepreneur.

5. Judge Gillespie found that the Appellant had shown no established or proposed links with persons who might inspect vehicles and report on their condition and had given no satisfactory explanation as to why people would resort to the importation of used cars of such potentially uncertain standard rather than exploit the ready stock of used cars available without cost of inspection, import duties and fees in this country. He also took into account that the whole business plan was apparently devised and made the subject of application very shortly before the expiry of the Appellant's leave to remain. He had gone home for a time after his graduation and when he returned to Southampton had sought many jobs but could not get one. Judge Gillespie concluded that the Appellant had no intention of establishing a genuine business in the UK. He said that he considered as did the Respondent that the proposed business and the proposed customer and trading links abroad had been contrived for the purpose of supporting the application without any genuine intention of investing funds as stated into a viable business.
6. At the hearing before us Mr Bridock provided a statement of case in which he concedes that the Judge of the First-tier Tribunal did not err in law by failing to take into account the business plan because it had been submitted following the refusal of the application. He therefore dropped Ground one. (The Ground relative to Article 8 ECHR was not to be proceeded with.) He went on to say that the Secretary of State refused the application only on the grounds of genuineness but instead of relying on that the Judge of the First-tier Tribunal had relied on the viability of the business which is an incorrect test. He said that although he would accept that viability may go to credibility it is clear that Judge Gillespie gave far too much weight to viability and indeed transposed that as the test. For example at paragraph 7 he accepts the business is theoretically possible but then using his own view of the business suggests that the business is not viable. Similarly in paragraph 8 he suggested the business does not need an investment of £50,000 but it is unclear how he came to that conclusion. At paragraph 10 he accepted that the Appellant could make "some sort of a living" from his proposed business but then said, again without giving any reasons, that the business does not need a £50,000 investment. It is submitted that Judge Gillespie used an incorrect test to assess credibility and instead assessed viability.
7. The position of Mr Bridock was that the Judge mistook viability for genuineness and he put too much weight on viability. The intention of the Rule is to establish that a business is genuine. He relied on paragraph 10 of the determination in which the Judge said that he was not satisfied that the Appellant had any intention of investing

£50,000 in the business, submitting that it is clear that the £50,000 would be spent on stock and cars. He submitted that the decision was perverse and irrational.

8. In oral submissions Mr Jarvis said that the application was not made properly. He submitted that at paragraph 7 the reasons given by the Judge for questioning the business are satisfactory. If the assessment of the evidence is considered in the round the application did not indicate a viable and genuine business. There was just no evidence that it would work. The Judge did not just look at viability. He looked at everything in the round.

Findings on error of law

9. In terms of paragraph 245DD an applicant for leave to remain in the UK as an entrepreneur migrant has to show, *inter alia*

that he genuinely intends to invest the money referred to in Table 4 of Appendix A in the business or businesses referred to in (i)

It is further provided that in making her assessment the Secretary of State will assess the balance of probabilities and take into account several factors including,

the viability and credibility of the applicant's business plans and market research into their chosen business sector

the applicant's previous educational and business experience

the applicant's immigration history and previous activity in the UK

any other relevant information

10. As was stated in the refusal of leave to appeal by First-tier Tribunal Judge Pooler it is important to note in this case that Judge Gillespie was best placed to reach the decision he did having heard the Appellant under cross-examination. He had heard oral evidence. He was able to form an opinion of that evidence. Mr Bridock based his submissions resolutely on the distinction between "genuineness" and "viability". We did have some difficulty with his insistence on his view that this was crucial to the decision that the Judge made. We are of the view that in assessing whether or not an intention to set up as a business is genuine, viability is an important factor. In fact Judge Gillespie at paragraph 10 expresses himself not to be satisfied that the Appellant has 'a genuine intention of investing funds as stated into a viable business'. We agree that Judge Gillespie perhaps erred in commenting as he did that the business that the Appellant proposes on his analysis of it does not require the investment of any substantial funds, certainly nothing like the £50,000 said to be intended as an investment, but looking at the decision in the round we do not consider that to be material. Again it must be remembered that Judge Gillespie heard oral evidence and it is clear from the Record of Proceedings that there was good reason to question both the genuineness and the viability of the business. In particular, the Appellant's sole client was London Global Solutions Limited and he said he had chosen them because they have seven to ten cars. It is difficult to see the

relevance of that as basis for choice. When he was asked what sort of cars he would import he said he would import any car which his client requires from any price up to £40,000 both new and second hand. He said if he imported them he would get them cheaper but there was no evidence that this is so. The evidence that the Judge had before him included the transcript of the Appellant's interview in which he said that he is not a mechanic and he would pay local garages to repair the cars if necessary. The advert had said that he could repair cars cheaper than other places. He said he himself would go abroad to check that the cars were roadworthy and complied with UK laws but there is no information on whether any specific qualifications are required for this and the Appellant conceded that he is not a mechanic. There are letters apparently confirming that cars would be exported to Solent Solutioners Ltd but no financial details. The contract with London Global Solutions Limited was extremely lacking in detail. We note incidentally that although it was conceded by Mr Bridock that the business plan had not been submitted in time to the Secretary of State it is in the bundle. The Judge did not take account of it but it is hard to see how it could have assisted the Appellant as there is not a jot of reliable evidence to support any of the figures in it.

11. We had difficulty at the hearing comprehending Mr Briddock's submission that Judge Gillespie erred in placing too much weight on the viability of the business. It seems to us that the two are linked in paragraph 245DD (i) in relation to both the source of the funds and the business plans. Of course the business has to be genuine but in deciding whether or not it is, the viability of the business is a factor. Clearly the Secretary of State based her decision on the interview. She noted that the Appellant had been unable to offer detailed answers about his business plans and market research. The Judge was entitled to take into account the answers to the questions at interview along with the other documents before him and the oral evidence of the Appellant. Having considered that evidence we find that the conclusions he reached were neither perverse nor irrational and were open to him on the evidence before him for the reasons given.

Notice of Decision

We find that the decision of the First-tier Tribunal does not contain a material error of law and shall stand.

Signed

Date: 23rd September 2015

Deputy Judge of the Upper Tribunal