



IAC-PE-SW-V1

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

Appeal Number: IA/22078/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 11th September 2015**

**Decision & Reasons Promulgated
On 16th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**Mr Ehtasham Khalid
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Iqbal Counsel instructed by Britain Solicitors

For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Mr Ehtasham Khalid date of birth 16 November 1988 is a citizen of Pakistan. Having considered all the circumstances I do not make an anonymity direction.
2. This is an appeal by the appellant against the determination of First-tier Tribunal Judge S Aziz, whereby the judge dismissed the appellant's appeal against the decisions of the respondent dated 20th May 2014. The decisions by the respondent

were to refuse the appellant further leave to remain in the UK and thereupon to remove the appellant from the UK. The appellant had applied for further leave to remain as a Tier 1 Entrepreneur under paragraph 245 DD of the Immigration Rules and the Points Based System.

3. By decision made on the 30th April 2015 leave to appeal to the Upper Tribunal was granted. Thus the matter appears before me to determine in the first instance whether or not there is a material error of law in the original determination.

Immigration History

4. The appellant had first entered the UK on the 2nd December 2006 as a student with leave valid until the 13th March 2008. His leave had been extended at various times [as a student 12th March 2008 to 31st May 2011; 20th June 2011 to 30th January 2014] and thereafter as a Tier 1 (Post study Migrant)] until 27th March 2014. The appellant made an in time application for leave to remain as a Tier 1 (Entrepreneur).
5. The appellant was interviewed in respect of that application on the 7th May 2014.
6. By decision made on the 20th May 2014 the appellant's application as a Tier 1 (Entrepreneur) was refused. In refusing the application the respondent found that the appellant did not meet the requirements of paragraph 245 DD.

Issues in the case

7. To the benefit of the appellant Judge S Aziz made a number of findings of fact such that the appellant satisfied a number of issues raised in the refusal letter.
8. The appellant's representative submitted that the only issues still material were those under paragraph 245DD(i) -subparagraph (ii) the viability and credibility of the source of the money required in accordance with Table 4 of Appendix A and subparagraph (iii) the viability and credibility of the appellant's business plan and market research into the chosen sector for the business.
9. The respondent's representative pointed out that the Letter of Refusal had raised a number of other requirements of paragraph 245 DD specifically subparagraphs (iv) and (v). The appellant's representative submitted that the subparagraphs (iv) and (v) had been considered by the judge and findings to the benefit of the appellant had been made in respect thereof.
10. During the hearing before me the version of the rules applicable to this application was raised. One version of the rules required that a proper business plan to be produced. The earlier version of the rules did not have such a stipulation. Given the date of the application and decision, I apply the earlier version, an approach which appears to be consistent with the wording of the refusal letter and the approach of the judge.

11. The appellant's representative submitted that the judge had made findings to the benefit of the appellant on all the requirements of the rules save for subparagraphs (ii) and (iii) as set out above. In respect of subparagraph (ii) the representative pointed out that the judge considered the relevant evidence from paragraph 45 to 56.
12. The judge had in investigating the sources of the appellant's finances set out where contributions to the total had come from according to the bank account. It was submitted that the judge had however got the evidence wrong. The judge had in paragraph 50 ascribed specific funds to bank transfers from specific accounts relying on the details contained in the appellant's Standard Charter Bank Statements (SCBS) . However on close examination of the details recorded by the judge the sources for the funds and the accounts from which they emanate have not been accurately recorded. The judge clearly has the misread the bank records.
13. It is suggested that the judge has made further errors in his assessment of the evidence. It is suggested that the judge has misread the interview record and wrongly concluded that the appellant's brother was to be a silent partner. This is from the interview record at question 25. There the appellant states at the last section:-

“... And the 2nd financially , just in case I need more finance to fund my business I have a silent investment which is worth £30000 with my brother in Pakistan and in and further finance to fund my business I can bring that fund to the UK to support my business.”
14. If the interview record was the source for alleging that the brother was to be a silent partner then the judge appears to have misread the interview. However if one examines paragraph 29 and 30 of the decision it is clear that the judge has read the interview record correctly and what the judge was referring to there was the appellant's evidence before the judge that his brother would be a silent partner, which the appellant appears subsequently to have retracted.
15. The appellant's representative argued that the errors in respect of subparagraph (ii) could not be considered in isolation and that errors impacted on the whole of the fact finding approach by the judge. He also submitted that the requirements of paragraph 245DD (i) had to be considered as a whole and not as individual elements.
16. That appears to ignore the fact that a failure to meet one of the elements of 245DD would be fatal to an application even if the other requirements were met. Whilst clearly a legally incorrect approach to the fact finding in one element may impact on findings in other elements, it still has to be acknowledged that where legally justifiable reasons are given for finding that the appellant has not met the requirements of one element the application has to be dismissed.
17. In that regard whilst the judge's findings in respect of subparagraph (ii) may impact on the findings with regard to subparagraph (iii) I have to consider whether the findings in respect of subparagraph (iii) are undermined by earlier findings of fact or are sustainable.

18. Subparagraph (iii) relates to the viability and credibility of the applicant's business plan and market research into the chosen business sector. The judge deals with the issue from paragraph 57 onwards. Firstly the appellant had not submitted a formal business plan. Whilst there was no requirement to do so, such would have been useful evidence with regard to the appellant's business. The judge therefore looked at the documents submitted and the evidence given.
19. In this regard there is no suggestion of inaccuracy in respect of the evidence recorded. A business contract had been submitted and the judge had carefully considered the contract. The judge has given valid reasons for finding that this was not a genuine civil engineering contract which related to several months of work. The judge in paragraphs 57 to 61 has given detailed reasons for that finding. The conclusions in respect of this requirement are not affected by the inaccurate evidential approach in respect of the bank accounts and the other matters set out above. The finding that this was not a valid civil engineering contract was a finding of fact the judge was entitled to make on the basis of the evidence and which the judge has fully justified on a careful analysis of the evidence.
20. The judge then considers other evidence relating to the business activity of the appellant. In paragraphs 62 the judge deals with inconsistent evidence of minimum payments; in paragraph 63 the issue of a contract between the appellant and Kaybridge Construction; paragraph 64 the invoices submitted and the receipts and anomalies on the receipts. In respect of each item the judge has given valid reasons for the findings made. Finally in paragraph 66 the judge has dealt with minor anomalies which in themselves would not be determinative but when added to the other factors taken into account in assessing the viability and credibility of the business and the market research the judge was entitled to take into account.
21. Having considered the details given under this heading the judge's findings are sustainable in themselves and are not impacted upon by the findings in respect of subparagraph (ii). For the reasons set out the judge's decision in respect of subparagraph (iii) are justified and sustainable. The judge was entitled to find that the appellant does not meet all the requirements of paragraph 245 DD(i) subparagraph (iii).
22. Accordingly whilst the judge may have made errors in assessing specific parts of the evidence the judge has justified the conclusions in respect of subparagraph (iii) and therefore any errors are not material.
23. In the grounds of appeal issue is taken with regard to the judge's approach to Article 8. There was no evidence of any family life in the UK put before the judge. The only elements of private life that were put before the judge related to the appellant's business. The Immigration Rules clearly had provisions under which the appellant as a business man could remain in the UK. There is nothing otherwise under Private life that warrants Article 8 being engaged.

24. Even if private life may be engaged and there had to be an assessment of such private life, in assessing private life given that the rules cover all aspects of private life advanced by the appellant I would not have considered the aspects of private life advanced warranted consideration under article 8. Even if I am wrong with regard to that and the decision interferes with such, the decision is in accordance with the law and for the purpose of maintaining immigration control. As a final matter given the provisions in the rules and all the other factors I would in any event have found that the decisions were proportionately justified.
25. For the reasons set out there is no material error of law in the decision and I uphold the decision to dismiss this appeal on all grounds

Signed

Date

Deputy Upper Tribunal Judge McClure