



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

Appeal Number: IA/26993/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15<sup>th</sup> May 2015**

**Decision &  
Promulgated  
On 26<sup>th</sup> May 2015**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

**Between**

**FAZLUR RAHMAN FAROQUI MOHAMMED  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr V Makol, instructed by Maalik & Co

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of India whose date of birth is recorded as 10<sup>th</sup> March 1989. On or about 23<sup>rd</sup> May 2014 he made application as a Tier 1 (Entrepreneur) Migrant under the points-based system. On 16<sup>th</sup> June 2014 the application was refused and a decision was made to remove him by way of directions pursuant to Section 47 of the Immigration, Asylum and Nationality Act 2006. In refusing the application the Secretary of State relied on paragraph 322(1A) and (2) of the Immigration Rules, it being

suggested that the Appellant had submitted a documentary evidence that was not genuine.

2. The Appellant appealed. His appeal was heard on 29 January 2015 by Judge of the First-tier Tribunal Henderson sitting at Taylor House. She considered the evidence that was before her and then dismissed the appeal. Not content with that decision by Notice dated 16<sup>th</sup> February 2015 the Appellant made application for permission to appeal to the Upper Tribunal, which permission was granted by Judge of the First-tier Tribunal Pooler on 30<sup>th</sup> March 2015, on the basis of the grounds which were to the effect that the judge had approached the appeal as if the burden of proof was upon the Appellant whereas the burden of proof was in fact upon the Respondent; indeed such is trite law but see for example: Mumu (paragraph 320; Article 8; scope) [2012] UKUT 00143(IAC).
3. Although this is the Appellant's appeal I heard from Mr Wilding first. He sought to persuade me that although at paragraph 14 of her Statement of Reasons the judge had expressed the burden of proof as being on the Appellant, still there was no material error because the offending document had been demonstrated not to be genuine by reason of an email from the Punjab National Bank, which the judge had considered and made reference to at paragraph 52 of the Statement of Reasons.
4. The judge agreed that the email of 11<sup>th</sup> June 2014 did not answer all the questions that had been raised by the Respondent nor did it give details of the identity of the sender of that email but she said this:

"I find that it did raise sufficient doubt (my emphasis) over the genuine nature of the documents supplied by the Appellant. I further find that the Appellant did nothing to show the Respondent that their findings were incorrect."
5. In my judgement this Statement of Reasons simply cannot stand. The burden of proof was plainly upon the Secretary of State and it was for the Secretary of State not simply to raise a prima facie case but to prove it on balance of probabilities. Of course there was an evidential burden on the Appellant. He was required to produce or adduce sufficient evidence, if he could, to meet the case of the Secretary of State but it is for the judge to be satisfied on balance of probabilities that the Secretary of State's case is made out.
6. It is certainly not enough to say that the judge found there to be "*sufficient doubt*"; that reflects not only a misunderstanding of where the burden lay but also a lack of appreciation of the standard.
7. In this case the entire balance of the Statement of Reasons is wrong because the judge has approached the case, having put the burden upon the Appellant, by an analysis of what the Appellant had to say and his evidence rather than by starting with an analysis of the Respondent's evidence.

8. Given the nature of the error, I am of the view that the decision simply cannot stand. This is not a Decision that can be mended. It is beyond repair. In these circumstances the matter is to be remitted to Taylor House to be heard afresh before a judge other than Judge Henderson.
9. Insofar as it is necessary for me to do so, I grant leave however to the Secretary of State to adduce such evidence as she feels appropriate to bring before the First-tier Tribunal in support of the allegation, which is a serious one. It will of course be open, on the same basis, for the Appellant to adduce such further evidence as he feels appropriate to counter the allegation yet to be proved by the Secretary of State in the remitted case.

**Notice of Decision**

10. The appeal to the Upper Tribunal is allowed. The decision of the First-tier Tribunal is set aside. The matter is remitted to the First-tier Tribunal to be remade afresh before a judge other than Judge Henderson.

**Signed**

**Date**

**Deputy Upper Tribunal Judge Zucker**