



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

Appeal Number: IA/29608/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8th April 2015**

**Decision & Reasons Promulgated
On 20th May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MISS MEI ZOU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Gillaro (LR)

For the Respondent: Mr C Avery (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Herbert OBE, promulgated on 23rd December 2014, following a hearing at Hendon Magistrates' Court on 10th December 2014. In the determination, the judge allowed the appeal of Miss Mei Zou. The Respondent Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female citizen of China who was born on 22nd February 1987. She appeals against the decision of the Respondent Secretary of State dated 11th July 2014 to refuse her application to vary leave to remain in the UK under the points-based system. The applicable Rules are paragraph 41-SD(e)(v) of Appendix A.
3. The basis of the Respondent's rejection under the points-based system was that the Appellant could not be awarded 25 points because she could not provide satisfactory evidence to demonstrate that she had access to at least £50,000. She had not submitted at Companies House Current Appointment Report which showed the date she registered as a director of a new or existing company. Moreover, the stated job title of careers' advisors did not affect the services that the business was offering because the evidence supplied suggests that she was working as a travel agent which is a job role below NQF level 4.

The Judge's Findings

4. The judge held that the Respondent had incorrectly taken only one aspect of the Appellant's self-employed function into account, namely, that she worked in a travel agency. The Appellant ought to have been awarded 25 points on the basis that she did have funds available and was skilled to the NQF level 4 or above.
5. The Appellant was registered as a new business in which she was director and the evidence enclosed from Companies House did include a printout of form IN01 which "clearly listed the Appellant as a sole director of a company with the document itself confirming authorisation as well as authenticity which the Respondent failed to take into account" (paragraph 23).
6. The judge allowed the appeal on the basis that he was satisfied on the evidence that the Appellant complied with the Immigration Rules (see paragraph 24). Thereafter, the judge also gave consideration to the case of **Rodriguez (Flexibility Policy) [2013] UKUT 00042** and suggested that had the Respondent been of the view that the IN01 document submitted was not satisfactory then, "the Respondents could and should have used the evidential flexibility policy and requested that the Directive should be shown under an alternative format..." (paragraph 26).
7. Consideration was given to Article 8 and the application of the "**Razgar** principles", but the appeal was dismissed on this basis (see paragraphs 30 to 34).
8. The judge concluded by stating that the Appellant did have access to funds of £50,000 in circumstances that does comply with the information before the judge and the decision to refuse was not in accordance with the law (see paragraphs 36 to 37).

Grounds of Application

9. The grounds of application state that the judge erred in law because paragraphs 41-SD of Appendix A makes it quite clear that,

“If claiming points for being a director of a UK company at the time of his application, a printout of a Current Appointment Report from Companies House, dated no earlier than three months before the date of the application, listing the applicant as a director of a company that is actively trading and not dormant, or struck off, or dissolved or in liquidation, and showing the date of his appointment as a director of that company...”

is essential. Moreover, the Rules make it clear that,

“If claiming points for being a director of a UK company other than the company referred to above, at any time before the date of his application, a printout from Companies House of the applicant’s appointment history, showing that the applicant has held directorships continuously during the period in which he claims to have been a director”

should be shown. The Appellant had not done this.

10. On 18th February 2015, permission to appeal was granted on the basis that the judge had misapplied the Rule in **Rodriguez** as now confirmed by the Court of Appeal.

Submissions

11. At the hearing before me on 8th May 2015, Mr Avery, appearing on behalf of the Respondent, relied upon the Grounds of Appeal and submitted that the evidence was not submitted in the correct format at the time of the application. Moreover, the Appellant could not show that 25 points ought to have been awarded on the basis of funds available and that she was skilled to the NQF level 4 level.
12. Moreover, when the judge refers to the case of **Rodriguez** at paragraph 25 of the determination, he erroneously refers to the Tribunal determination which had been overruled by the Court of Appeal such that this in itself was an error.
13. For his part, Mr Gillaro submitted that the reference to **Rodriguez** at paragraph 25 was not a material error because what had happened since then was that the same flexibility policy had now been incorporated into the Immigration Rules. The judge would properly speaking, to have referred to the Immigration Rule, rather than to what was said at paragraph 12 of the Tribunal determination.
14. Even so, it was not the case that what was said at paragraph 12 of the determination was wrong. What was said there was that the policy requires the Respondent to notify the Appellant of the information on shortcomings in her application so that she can deal with the shortcoming. Subject to this, Mr Gillaro relied upon his skeleton argument.
15. In reply, Mr Avery submitted that the reference to **Rodriguez** in the Tribunal was simply wrong. Moreover, it was not the case that the Respondent Secretary of State should have used the evidential flexibility policy to request the Appellant to provide the information in the correct format. The Secretary of State may or may not do so. It was a matter for the Secretary of State. Finally, the document was not just in the wrong format, it was also the wrong document.

No Error of Law

16. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
17. First, in what is a clear and comprehensive determination, the judge makes findings of fact that the Respondent incorrectly took only one aspect of the Appellant's self-employed status into account, namely, that she worked with a travel agency, and overlooked the fact that she was also the director of a new company. The judge held that "that was neither fair nor appropriate" (see paragraph 22).
18. Second, the judge went on to hold that the Appellant was registered as a director with the new business, "and that the evidence enclosed from the Companies House included a printout on form IN01" and that this "clearly listed the Appellant as the sole director of a company with the document itself confirming authorisation as well as authenticity ..." (paragraph 23). It was on this basis that the judge ultimately concluded that, "I am satisfied therefore that this evidence of being a director satisfied the requirements of the Immigration Rules" (paragraph 24). It was only thereafter, however, that the judge went on to consider, as a separate issue, the application of the "evidential flexibility policy" and referred to the case of **Rodriguez** (at paragraph 25).
19. Given that the Appellant had provided an IN01 document from Companies House, which listed her as a sole director of a company, in circumstances where the Respondent Secretary of State alleged that she had not submitted a Companies House Current Appointment Record which showed her as being so registered, this should have put the Respondent's caseworkers on notice that such a document does indeed exist, although provided in a different format, to confirm the Appellant's directorship of her business, so as to enable the caseworkers to make further enquiries.
20. Under paragraph 245AA(b)(ii) if the information is not in their "correct format", it could be remedied in its deficiency by the provision of the specified Current Appointment Report which confirmed the truthfulness of what was contained in the IN01 document from Companies House.
21. In short, I find that the error, assuming that it exists, is not a material error on the part of the judge, because the judge had already allowed the appeal on the basis of the findings of fact made (see paragraphs 21 to 24).
22. Insofar as consideration is thereafter given to the evidential flexibility policy, and a reference is made to the Tribunal determination of **Rodriguez** which has since been appealed by the Court of Appeal, there was again no material error of law because the Rules now expressly refer to documents that are not in the "correct format" which was precisely the case here.
23. Accordingly, the judge was entitled to allow the appeal as he did.

Notice of Decision

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity direction is made.

Signed

Dated

Deputy Upper Tribunal Judge Juss

16th May 2015