



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

Appeal Numbers: IA/30204/2014
IA/30205/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 4th March 2015**

**Decision & Reasons
Promulgated
On 10th March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

**MRS AYSHA NILOFER PUTHAN PURAYIL
MR SAYYED INTHIKHAB ALAM MARANGALATH
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr J Trussler, Counsel

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

DECISION AND REASONS

1. The Appellants are citizens of India who sought leave to remain here as a Tier 1 (Entrepreneur) Migrant and a dependent partner on 18th June 2014. Her application was refused and their subsequent appeal to the First-tier Tribunal dismissed by a panel in a decision promulgated on 26th November 2014.

2. The panel noted that it was accepted by the solicitor for the first Appellant that a letter from a legal representative confirming the first Appellant's signature had not been provided. The panel considered whether the Secretary of State should have contacted the first Appellant under paragraph 245AA of the Rules and found that this paragraph did not apply. Accordingly they went on to dismiss the appeal under the Immigration Rules.
3. The Grounds of application submitted that the panel fell into error particularly in that the judges had failed to consider that the first Appellant had submitted all the required documents but only the legal representative letter had missing the specified information. Accordingly paragraph 245AA should have been applied.
4. Permission to appeal was granted for reasons given in the grounds. A Rule 24 notice was lodged and it was said that it was properly recorded that the Appellant's representative had conceded that the first Appellant had not provided a letter from a legal representative confirming the Appellant's signature. Furthermore, the panel had been correct to find that the provisions of paragraph 245AA were not applicable and therefore the Respondent was not required to consider exercising her discretion to contact the Appellant.
5. Thus the matter came before me on the above date.
6. Before me Mr Trussler accepted that there had been a missing signature but this was a case which fell under paragraph 245AA (b) (iv) in that the document did not contain all the specified information. In the circumstances the decision should be set aside and a re-hearing set before the First-tier Tribunal. In response to comments from Mr Melvin it was accepted that the missing document was not in existence at the time but there was an affidavit at page 86 of the bundle which did contain relevant information. In all the circumstances, having regard to all the other information supplied, the decision should be set aside.
7. Mr Melvin relied on his Rule 24 response. It was quite clear from the determination that the first Appellant had not appreciated she had to provide confirmation of a signature from a legal representative. That was tantamount to accepting that she could not meet the Immigration Rules and there had been an acknowledgement by the representative at the time that the first Appellant had not provided a letter from the legal representative confirming the first Appellant's signature. The panel had been correct to find that the first Appellant had not provided the specified documents and that the necessary document was not in existence at the time of the application. There was no error in law and the decision should stand.
8. I reserved my decision.

Conclusions

9. It is well-known that the Rules under points-based system cases are strict and prescriptive. There is no scope for judges to be satisfied by evidence

not of a nature specified in the rules. There is, unfortunately for the Appellants, no near-miss principle.

10. It was accepted before the panel and also before me that the first Appellant had not provided a letter from a legal representative confirming the first Appellant's signature. It is also recorded that the first Appellant had said in evidence that she had not appreciated she had to provide confirmation of her signature from a legal representative.
11. As Mr Trussler properly put it this was a case where the Appellant hoped that the Secretary of State might exercise her discretion under paragraph 245AA. The particular segment relied on is 245AA (d) (iv), namely "a document does not contain all of the specified information".
12. It is not disputed that the panel were correct to conclude that the necessary document was not in existence at the time of the application. What that means is that if the Secretary of State had gone back to the first Appellant and pointed out the defect in the document that no document in the right form would have been forthcoming and it may be said that this was appreciated by the Secretary of State. No doubt the Secretary of State could have exercised her discretion differently but that is a very different matter from saying that she was obliged to do so and it is well-established that the Tribunal will not lightly interfere with the discretion of the Secretary of State unless that decision is **Wednesbury** unreasonable. There was, correctly, no submission to that effect and given the acceptance of the fact that the document did not exist it is difficult to see how the panel can be criticised for making the findings they did.
13. The only argument that could properly be placed before me was the one that was placed, namely that the Secretary of State should have reverted to the first Appellant and asked for the required document to be lodged. In the circumstances that the document did not exist I cannot see that the Secretary of State has exercised her discretion wrongly, and certainly not in the sense that the panel were bound to conclude that she had exercised her discretion in an unlawful way. As has been said the Rules in this type of case are particularly demanding on Appellants. Absent any error by the panel the decision must stand.

Notice of Decision

14. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
15. I do not set aside the decision.
16. No anonymity direction is made.

Signed

Date **10th March 2015**

Deputy Upper Tribunal Judge J G Macdonald