



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

**Appeal Number: IA/37290/2014
IA/37320/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 17 November 2015**

**Sent to parties on:
On 22 December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE L MURRAY

Between

**SATHYA MURTHY CHILUMULA
ARAVIND VEGGALAM
(ANONYMITY ORDER NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Reid, Counsel

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

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

No anonymity order was made by the First-Tier Tribunal. I find that no particular issues arise on the facts of this case that give rise to the need for a direction. For this reason no anonymity direction is made.

DECISION AND REASONS

1. The Claimants are Indian nationals and were born on 12 October 1987 and 30 May 1988. Their applications for further leave to remain as Tier 1 (Entrepreneur) Migrants were refused by the Respondent on 18 September 2014. They appealed against that decision and their appeals were heard and dismissed by First-tier Tribunal Judge R L Meates on 25 March 2015. They sought permission to appeal against that decision and permission was granted by Designated Judge of the First-tier Tribunal Judge Baird on 5

August 2015 on the basis that the decision was lacking in detail. The impression given was that the Judge simply accepted what the Respondent said without considering the applicable Rules himself. The reasons for refusal by the Respondent were not properly addressed. There was no indication of what the evidence of the clear that the reasons given for the findings made were based on a proper assessment of the application law.

The Grounds

2. The grounds assert that that First-tier Tribunal Judge erred in failing to identify the issues and the evidence before him. The First-tier Tribunal is said to have failed to consider whether the Appellants met the requirements of the relevant Rules rather than stating that the decision of the Respondent was correct. The basis for the findings that the bank letter and contract did not provide the required information was not set out. The First-tier Tribunal did not properly examine the contract which was based on performance and therefore the duration provision at paragraph 41 SD (e) (iv) 1 (d) of Appendix A of the Immigration Rules was met.

The Hearing

3. Mr Jarvis accepted that the First-tier Tribunal's decision was not well written and it was not entirely clear what was said and argued and what was accepted. With regard to the requirements of paragraph 41 SD (e) (iv) (1) the Appellants had provided a contract for services between their business and Rolabeth Ltd. That contract, as confirmed by a letter dated 11 September 2014 at E1 of the Respondent's bundle was a rolling contract with a 30 day notice period. Mr Jarvis conceded that a rolling contract was capable of meeting the requirements of paragraph 41 SD (e) (iv) (1) (d) and that the First-tier Tribunal had erred in failing to consider the contract and whether the evidence that it was a rolling contract was sufficient to meet the requirements of the Rule. Mr Jarvis initially argued that this was not a material error of law as the Appellants had not demonstrated that they met the requirements of paragraph 41 SD (e) (iii). However, he reneged from this position as it transpired that the Appellants had submitted evidence in relation to this requirement that was not in the Respondent's bundle nor before the First-tier Tribunal at the hearing. He conceded that the error of law was therefore material.
4. The representatives agreed that in the light of the fact-finding required the matter should be re-heard in the First-tier Tribunal.

Decision and reasons

5. I find that the decision of the First-tier Tribunal was inadequately reasoned, failed to take into account relevant evidence and assess that evidence against the requirements of the Immigration Rule in issue. The Appellants had submitted, with their applications, a contract for services between their business and Rolabeth Ltd. They also submitted a letter dated 11 September 2014 from Online Immigration UK confirming that this was a rolling contract without a specific end date but terminable on 30 days

notice. The First-tier Tribunal failed to consider whether this evidence was capable of meeting the requirements of paragraph 41 SD (e) (iv) (1) (d) which required the contract to show the duration of the agreement.

6. Whilst the Respondent set out the requirements of paragraph 41 SD (e) (iii) in the Refusal Letter, she did not contend that the Appellants did not meet these requirements or that the required evidence had not been submitted. It is also unclear from the First-tier Tribunal's determination whether this matter was in issue. It is clear, in any event, that no findings were made in relation to that paragraph. Mr Jarvis established, having examined the Respondent's file that the Appellants had submitted documentation addressing this aspect of the Rule that was not before the First-tier Tribunal. In the circumstances, if the requirements of paragraph 41 SD (e) (iii) were not in issue, then the failure to make adequate findings in relation to paragraph 41 SD (e) (iv) was material and if in issue, there was relevant available evidence not before the Tribunal. In either case therefore the error of law was material.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

The Practice Directions of the Upper Tribunal indicate that the remaking of the decision of the First-tier Tribunal should be undertaken in the First-tier Tribunal in the light of the judicial fact-finding required.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge L J Murray