



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/38197/2014  
IA/38200/2014  
IA/38203/2014

**THE IMMIGRATION ACTS**

Heard at Manchester Piccadilly  
On 30 September 2015

Decision Promulgated  
On 28 October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

AMANDEEP KAUR  
INDERPREET SINGH  
GURMANVERR SINGH  
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Ms G Patel counsel instructed by Dominic & Co  
For the Respondent: Mr A Mc Vitie Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellants.

Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Lambert promulgated on 12 February 2015 which allowed the Appellant's appeal to the limited extent that it was remitted to the Secretary of State for a fresh decision to be made.

### Background

3. The first Appellant was born on 25 January 1987 and is a national of India. The other Appellants are her husband and child who are her dependents in this appeal. I shall refer throughout this decision to 'the Appellant' meaning the first Appellant.
4. On 24 January 2014 the Appellant applied for leave to remain in the UK as a Tier 1(Entrepreneur) Migrant under the Points Based System
5. On 5 September 2014 the Secretary of State refused the Appellant's application and made directions for her removal under s 47 of the Immigration, Asylum and Nationality Act 2006.
6. The refusal letter gave a number of reasons:
  - (a) The Appellant did not provide the specified evidence required by paragraph 41-SD(d)(ii) to establish that she had access to funds as required.
  - (b) The Appellant claimed access to £50,000 funds in her own name but does not satisfy the requirements of paragraph 41-SD(e)(iii)-(iv) as she failed to provide the required evidence to show that her business was actively trading nor did she provide the business bank letter or statements as required by 41-SD(e)(vii)(2).
  - (c) The Appellant therefore could not be awarded the 25 points claimed for Attributes.
  - (d) The remaining points claimed based on funds (50 points) could also not be awarded.

### The Judge's Decision

7. The Appellant appealed to the First-tier Tribunal and appeared in person. First-tier Tribunal Judge Lambert ("the Judge") allowed the appeal against the Respondent's decision to the limited extent that it was remitted to the Respondent for a lawful decision to be made.
8. The Judge found :
  - (a) That the Appellant was not relying on third party funding but was relying on the funds held in her name.
  - (b) The Respondent asserted that the Appellant had not provided

- I. advertising material covering a continuous period commencing before 11/7/2014( 41-SD(e)(iii)(1)
  - II. a contract for services which showed the duration of the contract (41-SD(e)(iv)(1)(d)
  - III. business bank statements or a properly headed bank letter (41-SD(e)(vii)(2)
- (c) The Appellant's application was made on 24 July 2014.
- (d) The Appellant asserted that the requirements listed at (b) above were not in force at the time of her application.
- (e) The Home Office Presenting Officer researched the content of paragraph 41-SD(e) as it was between 1-27 July 2014. Sub paragraph 9e)(iii) at that time contained no requirement for documents to cover a continuous period commencing before 11 July 2014 and the requirement in relation to bank statements (subparagraph (vii) was not in force at the date of application.
- (f) The Home Office Presenting Officer did not seek to rely on the duration of the contract point.
- (g) The Respondent had therefore relied on the wrong version of the Rules and was unlawful and should be remitted for a lawful decision
9. Grounds of appeal were lodged arguing that :
- (a) At the time of the application and refusal paragraph 41-SD (e)(iii) of Appendix A contained a requirement for documents to cover a continuous period commencing before 11 July 2014.
  - (b) At the time of the application and the refusal paragraph 412-SD (e) (vii) was in force.
  - (c) These requirements were brought into effect by the Statement of Changes in the Immigration Rules HC532 dated 10 July 2014.
10. On 1 April 2015 First-tier Tribunal Judge Andrew gave permission to appeal.
11. At the hearing I heard submissions from Mr Mc Vitie on behalf of the Respondent that :
- (a) The Rules are very complex.
  - (b) The Home Office Presenting Officer made a mistake in conceding that the wrong version of the rules had been applied in the decision.
  - (c) Paragraph 37 of HC532 states that the effective date of change was 10 July 2014 to an application made on 24 July 2014.
12. On behalf of the Appellant Ms Patel submitted that :
- (a) The error that was made was not material to the outcome of the decision.
  - (b) In relation to the advertising material paragraph 41-SD (e)(iii) of Appendix A required that the documents covered a continuous period commencing before 11 July 2014. The Appellant's witness statement mentioned that there was

advertising on Gumtree from 9 July 2014 to the date of the application (page 64-5 of the bundle) which taken together with the letters from Gumtree at page 49 onwards of the bundle showed that the Appellant had advertised for a continuous period prior to the date of application.

- (c) In relation to the requirement for a contract for services which showed the duration of the contract it was clear from the Appellant's witness statement that the contract was signed on 2 July 2014 and the Appellant could not have foreseen that the Rules would change after the contract was signed. Fairness would have required the Appellant to be given the opportunity to provide a contract that met a change in the Rules she could not have anticipated.
  - (d) In relation to the requirement of paragraph 41-SD(e) (vii)(2) there was evidence before the decision maker at page 45 of a bank account being opened by the Appellant . There were also bank statements for that account at pages 39-44 .
  - (e) At the time of the application the Guidance that was in force was the the April Guidance; no new Guidance was issued until after the date of application. The Judge would therefore have still remitted the case to give the Appellant the opportunity to provide a contract in accordance with the requirements that came into force after her contract was signed.
  - (f) The changes in issue literally came into force over night and applicants were not given the usual 21 days notice: again this was an issue of fairness.
13. In reply Mr Mc Vitie submitted on behalf of the Respondent submitted that :
- (a) The rules are the Rules.
  - (b) The Appellant had still not provided a contract that met the requirements.
  - (c) The email from the bank did not meet the requirements of the Rules which was for a letter from the bank on its headed paper.

### **Finding on Material Error**

14. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law.
15. I am satisfied that the Judge made an error of law relying on the concession of the Home Office Presenting Officer that the wrong version of the evidential requirements of the Rules had been applied in the Refusal Letter. HC 532 brought the changes in issue into effect on 11 July 2014.
16. Mr Mc Vitie provided a copy of HC 532 and in relation to paragraph 421-SD(e) (iii) I am satisfied that the requirement in paragraph 37 of HC 532 for advertising material 'covering a continuous period commencing before 11/7/2014 up to no earlier than 3 months before the date of the application was to take effect under the heading of Implementation on 11 July 2014. Thus they applied to the Appellant's application.
17. I have considered whether this was material to the outcome on the basis of Ms Patels argument that in fact the Appellant could meet the requirements of this provision. Ms Patel argues that there was material in the Appellant's statement and from Gumtree to show advertising for a continuous period prior to date of application.

I am satisfied that the evidence before the Judge did not lead to only one conclusion: the Gumtree emails at pages 49-52 merely refer to the removal of advertising material as it had been posted in the wrong place on Gumtree . The letter relied on at page 64 is an advertisement apparently posted 3 hours prior to the date of the printout which was 23 July 2014 that is the day before the Appellant's application. I am satisfied that had the Judge appreciated that the correct version of the Rules was contained within the refusal letter she would have made findings as to whether the evidence before her met those requirements and the conclusion urged by Ms Patel was not inevitable . The failure of the First-tier Tribunal to address and determine this issue constitutes a clear error of law. This error I consider to be material since had the Tribunal conducted this exercise the outcome could have been different.

18. In relation to the rejection of the contract between the Appellant and Ultimate Brow Bar because there was no clear duration of contract period shown it is unclear and indeed not recorded why the Home Office Presenting Officer stated that she did not seek to pursue that point. The provision was certainly in force as it appears at paragraph 38 of HC 352 and its implementation date was again 11 July 2014. The failure of the First-tier Tribunal to address and determine this issue constitutes a clear error of law as again I see no inevitability about the acceptance that this was unfair and both sides should have the opportunity to address this on the basis that the provision was in force. This error I consider to be material since had the Tribunal conducted this exercise the outcome could have been different.
19. In relation to the bank evidence requirements these are found in paragraph 39 of HC 352 and again were in force on 11 July 2014 so the Judge was in error to find that they had been wrongly applied. The requirement read:

“if the applicant is currently a director, a company bank statement showing that the company has a United Kingdom account, or a letter from a United Kingdom-regulated financial institution, on the institutions headed paper, confirming that the company has a bank account and the applicant is a signatory of that account.”
20. The Judge had before her material that arguably met that requirement but I do not accept that the Judge would have inevitably reached that conclusion. There was no bank letter in headed notepaper only an email. There is no reference to the Appellant being a signatory to the account. The failure of the First-tier Tribunal to address and determine this issue constitutes a clear error of law .This error I consider to be material since had the Tribunal conducted this exercise the outcome could have been different.
21. I therefore found that errors of law have been established and that the Judge's determination cannot stand and must be set aside in its entirety. All matters to be redetermined afresh.
22. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25<sup>th</sup> of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

23. In this case I have determined that the case should be remitted because the judge made no findings about the evidence before her having wrongly decided that the wrong version of the Rules had been applied in this case.
24. I consequently remit the matter back to the First-tier Tribunal sitting at Manchester to be heard on a date to be fixed before me.

Signed

Date 9.10.2015

Deputy Upper Tribunal Judge Birrell