



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/00177/2015

THE IMMIGRATION ACTS

Heard at Field House
On 29 March 2016

Decision and Reasons Promulgated
On 29 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

ZAHID MEHMOOD BANGASH
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Chohan (Immigration Chambers)
For the Respondent: Ms S Sreeraman (Home Office Presenting Officer)

DECISION AND REASONS

1. This is the appeal of Zahid Mehmood Bangash, a citizen of Pakistan born 29 November 1974, against the decision of the First-tier tribunal of 17 July 2015 dismissing his appeal against the refusal of his application for leave to remain on 8 December 2014 and the setting of removal directions against him under section 47 of the Immigration Asylum and Nationality Act 2006.
2. He was granted leave to enter on 31 July 2010 as a student until 30 August 2011, which was extended until 29 April 2012, and he was then given further leave as a post study worker until 4 September 2014.
3. His application of 10 July 2014 for leave to remain as an Entrepreneur (to run his marketing consultancy, Szur Associates Ltd) was refused primarily because of the

delay in transferring funds to the United Kingdom notwithstanding that the company had been trading since 7 April 2014, which led to doubts as to the funds being generally available to him. Furthermore at interview he had been asked about market research and stated that he had been conducting market research in relation to statistics from the Office for National Statistics and it was “not clear how this relates to your business”. Additionally he had not used his post study work leave to develop the business, his company having been incorporated only on 7 April 2014. The interview noted that he “had to be pushed to explain what invested on. Claims to have spent on renovation of office but wouldn’t that fall to the landlord to pay for ... supplementary question responses also rather vague. Overall not a credible entrepreneur.”

4. At the hearing before the First-tier Tribunal he confirmed that he had secured one contract, with Abs.com IT solutions, owned by his brother’s friend, for which he had been paid £855.
5. The First-tier Tribunal upheld the refusal by the Secretary of State, taking the view that
 - (a) Whilst the funds did not have to be present in the United Kingdom their continued retention abroad did raise an issue as to whether he genuinely intended to invest them here;
 - (b) The expenses of £10,000-£15,000 to which the Appellant referred at the hearing were very significant for a small enterprise that was involved in leafleting and used Gumtree in contacting clients and it was surprising that he was unable to identify and explain the costs given his expertise in business management; he could be expected to have considered the return on his investment having attracted only one client, a friend of his brother, who had paid him £855, through those efforts;
 - (c) His claim that he had additionally mentioned advertising via Google at interview was not a credible one given it was not recorded in the transcript thereof.
6. Grounds of appeal against that decision asserted that
 - (1) The First-tier Tribunal had erred in law in failing to consider the Appellant's evidence seeking to explain the discrepancies believed to have arisen at interview which represented an illegitimate restriction on post-decision evidence: *Ahmed* was wrongly decided if it sought to rule out responses to the Home Office interview;
 - (2) The Appellant had altered his intention following his studies, as authorised by the Rules permitting switching into the Tier 1 Entrepreneur route, which was relevant to the assessment of the compatibility of the immigration decision with his right to private life; furthermore the assessment under the Rules had infiltrated the consideration outside of them without regard to the admissibility of post-decision evidence on non-Points Based System grounds.

7. Permission to appeal was granted by Judge Zucker for the First-tier Tribunal on 12 February 2016 on the basis that there may have been an error of law in the refusal to admit evidence going to non-Points Based System facts.
8. At the hearing before me Mr Chohan argued that the Respondent should have sought further information from the Appellant before refusing his application if there were any matters as to which she was in doubt. Given the absence of any absolute requirement to invest funds in the United Kingdom before an application was determined, it was wrong to have attributed weight to that consideration. Ms Sreeraman maintained that the decision was a lawful one.

Findings and reasons

9. The Immigration Rules relevant to this application are found within Part 6A of the Rules addressing the Points Based System.

“245DD. Requirements for leave to remain

To qualify for leave to remain as a Tier 1 (Entrepreneur) Migrant under this rule, an applicant must meet the requirements listed below. If the applicant meets these requirements, leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements: ...

(h) Except where the applicant has, or was last granted, leave as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator and is being assessed under Table 5 of Appendix A, the Secretary of State must be satisfied that:

(i) the applicant genuinely:

(1) intends and is able to establish, take over or become a director of one or more businesses in the UK within the next six months, or

(2) has established, taken over or become a director of one or more businesses in the UK and continues to operate that business or businesses; and

(ii) the applicant genuinely intends to invest the money referred to in Table 4 of Appendix A in the business or businesses referred to in (i);

(iii) that the money referred to in Table 4 of Appendix A is genuinely available to the applicant, and will remain available to him until such time as it is spent by his business or businesses. 'Available to him' means that the funds are:

(1) in his own possession,

(2) in the financial accounts of a UK incorporated business of which he is the director, or

(3) available from the third party or parties named in the application under the terms of the declaration(s) referred to in paragraph 41-SD(b) of Appendix A;

(iv) that the applicant does not intend to take employment in the United Kingdom other than under the terms of paragraph 245DE.

(i) In making the assessment in (h), the Secretary of State will assess the balance of probabilities. The Secretary of State may take into account the following factors:

(i) the evidence the applicant has submitted;

(ii) the viability and credibility of the source of the money referred to in Table 4 of Appendix A;

(iii) the viability and credibility of the applicant's business plans and market research into their chosen business sector;

(iv) the applicant's previous educational and business experience (or lack thereof); ...

(j) The Secretary of State reserves the right to request additional information and evidence to support the assessment in (h), and to refuse the application if the information or evidence is not provided. Any requested documents must be received by the Secretary of State at the address specified in the request within 28 working days of the date of the request. ...”

10. In *Ahmed and Another (PBS: admissible evidence)* [2014] UKUT 365 (IAC) the Upper Tribunal ruled that where a provision of the Rules (such as that in para 245DD(k)) provides that points will not be awarded if the decision-maker is not satisfied as to another (non-points-scoring) aspect of the Rule, the non-points-scoring aspect and the requirement for points are inextricably linked; as a result, the prohibition on new evidence in s 85A(4) of the Nationality, Immigration and Asylum Act 2002 applies to the non-points-scoring aspect of the rule: the prohibition is in relation to new evidence that goes to the scoring of points.
11. The grounds of appeal are lengthy, convoluted and very difficult to interpret as raising material errors of law. It is clear that the Article 8 ground has no mileage if the decision under the Rules is upheld, because that finding would imply that any private life in this country had been formulated in relation to business activities that were not genuine, and it could hardly be disproportionate to interfere with private life of that nature. As to the ground under the Immigration Rules, there are repeated suggestions therein that the appeal would be used as a vehicle to question the correctness of the decision in *Ahmed* but Mr Chohan did not press that line of attack, understandably given that the reasoning therein was effectively upheld in *Olatunde* [2015] EWCA Civ 670.
12. I was not referred to any evidence that was overlooked by the First-tier Tribunal that was admissible in its enquiry (a letter from the Appellant's brother was not part of the application and for that reason was not admissible). Essentially its reasoning was based on the fact that the business's expenses appeared disproportionate to its returns and that the answers given at interview were unduly vague regarding the marketing steps taken, bearing in mind the business acumen of the Appellant and the limited range of activities that there were for him to recall.
13. One could certainly see that the judge below might have found in the Appellant's favour. However, the question on appeal is whether some error of law infects the decision making of the First-tier Tribunal, not simply whether another decision might have been taken. Before me no irrationality or failure to take matters into account was identified in those findings. They do not seem to me to be beyond the legitimate range of responses that might be taken to such evidence: whilst there is

no requirement to invest all the funds potentially available at the outset of a business enterprise, it will be easier to establish that the undertaking is a viable one if one does so; and although not every entrepreneur will be able to recall chapter and verse of their stated marketing activities, it cannot be said that vague answers must nevertheless be accepted as satisfactory.

Decision:

The decision of the First-tier Tribunal does not contain any material error of law and stands. The appeal is dismissed.

Signed:

Date: 27 April 2016

A handwritten signature in black ink, appearing to read 'MAS', with a long, sweeping underline that extends to the left and then curves back towards the right.

Deputy Upper Tribunal Judge Symes