



IAC-AH-DH-V1

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

Appeal Number: IA/30708/2014

THE IMMIGRATION ACTS

Heard at Field House
On 10th December 2015
Prepared on 14th December 2015

Decision & Reasons Promulgated
On 8th January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MISS ZAHRA SAEED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Singer of Counsel

For the Respondent: Ms Brocklesby-Weller, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Pakistan born on 7th October 1983. She appealed against a decision of the Respondent dated 25th July 2014 to refuse her application for further leave to remain in this country as a Tier 1 (Entrepreneur) Migrant under the points-based system and to remove her by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. Her appeal was allowed by Judge of

the First-tier Tribunal Buckwell sitting at Taylor House on 1st April 2015. In a decision dated 4th November 2015 I set the decision of the First-tier aside on the grounds of material error of law such that the appeal fell to be re-heard. Annexed to this determination is a copy of my decision on 4th November 2015 in which I gave my reasons for finding an error of law.

2. The Appellant was granted leave to enter the United Kingdom on 21st March 2011 as a Tier 4 (General) Student valid until 16th February 2012. Her visa was subject to conditions restricting employment and recourse to public funds and her work was limited to twenty hours per week during term time. On 6th June 2012 she was granted leave to remain in the United Kingdom as a Tier 1 (Post-Study Work) Migrant valid until 6th June 2014. Shortly before that leave was due to expire she made her application for further leave to remain as a Tier 1 (Entrepreneur) Migrant (investing at least £50,000) on 23rd May 2014. The Appellant was obliged to score 75 points under Appendix A for attributes. This was 25 points for access to funds, 25 points for money in a regulated financial institution and 25 points for money disposable in the United Kingdom.

The Application for Leave to Remain

3. The Appellant stated that she had £84,000 available for investment in her business AMS London Limited. She was a director of that company and her job title was marketing consultant. The Appellant supplied a number of documents with her application form including a business bank statement; a current appointment report from Companies House; certificate of incorporation; a list of directors and shareholders; advertising material comprising business card, Gumtree advertisement and a visiting card; printout of the website; affidavit from the Appellant's mother (who was providing some of the funding) along with a letter from her advocate; a business plan; a CT60 from HM Revenue and Customs; original of a marketing contract; tenancy at will; insurance policy; telephone bill; a CV; membership certificate of the IFA; personal bank statements for 120 days; a letter from the Appellant's accountant; audited accounts. She also provided details of her educational qualifications; a PAYE letter from HMRC and the latest employer's PAYE summary.

The Respondent's Pre - interview Consideration

4. Following the submission of the Appellant's application with documents in support the Appellant was called for interview on 30th June 2014 at Sheffield. The Respondent compiled some risk assessment notes prior to the interview indicating why an interview was sought in this case. There had already been an approved entrepreneur application made by Muhammad Siddiq Ur Rasool as an accountant who had invested £50,000 into AMS London Limited on 1st July 2013. The bank statement for the company showed funds of just over £12,000 two days before a £75,000 investment from the Appellant. Throughout December and January 2013/14 only one payment was received into the business. There were several high payments debited out of the account for unknown reasons particularly a payment on 28th April 2014 for £20,000 to

Pine Valley Limited for a marketing campaign. It was questionable why the company would need to pay a significant amount of money for this when the Appellant was their marketing director who should be able to undertake that role. An employee of Pine Valley Limited Avreet Singh was also an employee of AMS London Limited raising further questions as to why that money had been paid out.

5. The investment from Mr Rasool had already disappeared which questioned the integrity of the company. The only money left in the business account was the money invested by the Appellant. Why were there no other funds from the other directors? As the company had been established since 2009 what research had the Appellant undertaken to ensure that it was a profitable company and she had made an investment? What was she bringing to the company? There were spelling and grammatical errors in the business plan and the font changed during the document which indicated a lack of professionalism and care when completing the plan. Who had written it? The Appellant had stated she was working for AMS London Limited since late 2013 (in the business plan) and they asked to her to become a director. However the Appellant's statements to show what she was living on showed regular payments from Oracle Limited a bookkeeping company also based at the address in Ilford of AMS London Limited. This discrepancy cast doubt on the Appellant's intentions indicating that she was earning her living by working for Oracle Limited. The advertising on Gumtree was very limited and its professional appearance was questionable.

The Interview

6. A transcript of the record of interview was made available in the Respondent's bundle for the appeal. The Appellant stated that AMS London Limited was incorporated in 2009 as an accountancy business but was dormant until it started trading in 2012. She joined the company in March 2014 putting a marketing section into the company. In 2014 she submitted an annual return for AMS London Limited adding herself as a director and a 50% shareholder. The Appellant had been working for Oracle Limited part-time as a marketing consultant and assistant accountant from August 2011 until June 2014. Before that she worked in Pakistan with Citibank and did her Masters degree in Pakistan in management.
7. The last client the Appellant had identified marketing requirements for was Sefron Door Banqueting. She signed a contract with them on 9th June 2014 (after lodging her application) charging £3,000 for advising how to reach out to customers. The contract was for six months and thus at the time of interview it had not been long in existence. AMS London Limited were working in the same building in Green Lane Ilford as Oracle Limited. The address was used by a lot of businesses that were registered there but not trading from those premises. By way of market research for the demand for her business she had engaged in face-to-face interviews with approximately fifteen to twenty people as a "mystery shopper" visiting businesses such as Brian Thomas Estate Agents Limited pretending she was a customer to see if there was a need for a marketing company in a five mile radius of the premises in

Ilford. If she were subsequently instructed by a well-established company she would charge them £2,000.

8. 25 to 30 businesses operating in a five mile radius were offering the same kind of services but they were print ad companies or just providing websites one could not visit them. She was advertising her own business through Gumtree and through leaflets. The response from advertisements had not been great. She did not have a slogan but had written the wording for the adverts herself. Clients made contact with her company through what she described as an accountancy client referral, AMS London Limited was an accountancy firm and it was easier to target existing clients of the company.
9. The Appellant obtained the funds to invest in the business from a property inheritance fund that her mother had sent money to her. The funds were now in a Barclays business account. The Appellant received £75,000 from her mother. The remaining £9,000 (to bring the total up to £84,000) was comprised of a gift of £3,500 from her mother, the Appellant's own savings and a loan from a friend. The £75,000 came in on 31st March 2014, the remaining monies between March and April. There were two other directors, one had not invested any money so he had no shares, the other director had invested £55,000 or £60,000 before her arrival but she did not have any details of that.
10. The Appellant knew the directors of AMS London Limited from before and worked with them as a marketing consultant for a couple of months. She had been added as a signatory to the company's bank account. She had written the business plan herself. She had recruited one member of staff in April 2014 as a business development officer being paid £750 per month. She was continuing to work part-time with Oracle Limited until June but as at the date of interview was focusing on the business. She had £3,000 in savings so could easily support herself. Pine Valley Limited had a loan agreement for £20,000 with AMS London Limited. She herself had made an interest free loan to AMS London Limited who were liable to pay her back in three years if all went according to plan.
11. Following the interview the interviewer made a recommendation that the Appellant was a credible entrepreneur based on the evidence presented at interview. The applicant had answered the majority of the questions satisfactorily and was deemed to be a credible entrepreneur at the interview stage of their application.

The Explanation for Refusal

12. Following the interview the caseworker considered the documents submitted by the Appellant and the answers given by her in interview before formulating the refusal letter. The Respondent refused the application pursuant to paragraph 244DD(i) of the Immigration Rules because she was not satisfied that the Appellant genuinely intended and was able to establish, take over or become a director of one or more businesses in the following six months or that the Appellant genuinely intended to invest the money required by Table 4 of Appendix A in her business. The Table 4 funds were not genuinely available to the Appellant.

13. Paragraph 244DD provides that the Respondent must assess the application on the balance of probabilities and may take into account: the evidence the Appellant has submitted; the viability and credibility of the source of the Table 4 funds and the Appellant's business plans and market research into their chosen business sector; the Appellant's previous educational and business experience (or lack thereof); the Appellant's immigration history and previous activity in the United Kingdom; whether any necessary registrations etc. have been obtained and any other relevant information.
14. The Respondent's objections were as follows:
 - (i) Funds
 - (1) The Appellant had provided Barclays Bank statements in the name of AMS London Limited for the period 2nd December 2013 to 9th May 2014 (that is to say up to approximately two weeks before she submitted the application). She also supplied a third party declaration from her mother confirming that her mother would make £75,000 available to the Appellant. The Respondent was satisfied that the required funds in excess of £50,000 were held in the Appellant's Barclays business account. What the Respondent was not satisfied about was the source of those funds nor that all of the money was available for investment or would be used for investment in a business in the United Kingdom.
 - (2) The Respondent noted that the opening balance of the Barclays Bank account on 2nd December 2013 was just over £60,000. By 28th March 2014 that balance had reduced to £12,794.30 due to large sums of money being paid out of the account including £30,000 paid to TTM Polymer and £20,000 to Pine Valley. The Respondent was not satisfied with the Appellant's answers in interview to the questions about the relationship between Pine Valley Limited and AMS London Limited. The Appellant had said she was appointed as a director of AMS London Limited on 1st March 2014 and made a deposit of £75,000 into the business account on 31st March 2014. The Respondent expected the Appellant to know if the £20,000 paid back to Pine Valley Limited was to pay off a loan. Further the bank statements showed that the £20,000 paid to Pine Valley was for a marketing campaign. Given that the Appellant was already working as the company's marketing consultant it was expected that she would know what the £20,000 paid on 28th April 2014 to Pine Valley had been for.
 - (3) The Barclays business account showed a receipt of £75,000 on 31st March 2014 from Bolzano Trading, a declaration signed by the Appellant's mother said that she sent the £75,000 on 29th March 2014 via Bolzano Trading into AMS London Limited's bank account. However there was no evidence beyond that declaration to confirm that the Appellant's mother was connected in any way to Bolzano Trading. The Respondent was not satisfied that the funds were credibly available for investment in the business.

- (ii) The Respondent questioned the viability and credibility of the Appellant's business plans and market research. The business plan did not specify any of the financial details one would expect to see such as start-up costs, sales forecasts, fees for services etc. Of the research the Appellant indicated in interview she had carried out, there was no evidence of this research to show there was a market for her service. The Appellant had said there were 25 to 30 companies operating within a five mile radius. A search on yell.com showed 151 companies offering marketing consultancy services.
- (iii) The Appellant had provided two marketing contracts, one with Brian Thomas Estate Agents Limited dated 21st March 2014 and the other with Sefron Door Banqueting dated 9th June 2014. The contracts gave a generic list of services that could be offered in any business and did not specify details of the exact services the Appellant was providing to both clients. The marketing contract with Brian Thomas Estate Agents stated a total agreed fees of £4,583.30 payable in advance. This was not a credible figure.
- (iv) No evidence had been supplied to substantiate the Appellant's employment history as detailed by her in interview. There was no evidence she had used her post-study work leave to remain to develop a marketing consultancy service.

The Appeal at First Instance

15. The Appellant made a statement dated 10th March 2015 in which she said that her mother used a money transfer company office trading as Bolzano Trading to transfer the £75,000 to her account. Her mother regularly used Bolzano Trading as a medium to transfer money abroad from Pakistan. She had not been asked any questions in interview about TTM Polymer although had she been she would have drawn attention to audited accounts which showed that £53,027 was receivable from TTM Polymer Limited and £20,000 from Pine Valley Limited. The other two directors of the company had invested money in TTM Polymer Limited and lent money to Pine Valley Limited. TTM Polymer was a recycling company and was given the £53,000 for investment into recycling projects and had repaid £50,000 of that. The Pine Valley Limited payment was due to be paid back by 28th April 2015.
16. Her business was based in Ilford and her research had found 25 to 30 similar businesses to her at the time trading in close proximity to her own business. The Home Office figure of 150 taken from yell.com took into account not only marketing companies in Ilford but also marketing companies further afield including printing companies. Most of these companies were registered at personal residences without valid landline or fax numbers.
17. Since joining the company she had found a new client, a property developer who was finding it difficult to secure a source for his recently completed development in Harrow, Middlesex. She marketed the development and managed to locate a corporate buyer who agreed to purchase all the flats included in the development. She secured finder fees charged to the corporate buyer of £22,000 along with a 1% sales commission of £42,958. This way she gathered in £64,970 for the company.

This was paid into the company bank account on 24th October 2014 and 20th November 2014 when the deal was completed.

18. The Appellant's appeal was subsequently allowed as the Judge came to a favourable view of the Appellant's credibility and felt that she had met the Respondent's objections. After hearing submissions from the parties I subsequently gave my decision in writing finding an error of law and giving directions that the Appellant should file and serve admissible evidence bearing in mind the restrictions on postdecision evidence in points-based system appeals. That evidence should deal with each of the detailed complaints made in the refusal letter. It was not open to the Respondent to take new objections.

The Appellant's Further Submissions

19. Subsequently the Appellant filed and served a supplementary bundle of some 75 pages addressing the Respondent's refusal letter, giving further evidence about the Appellant's family circumstances, further audited accounts, a letter from a property development company, copy of the Respondent's evidential flexibility policy and a copy of the Supreme Court decision in **Mandalia [2015] UKSC 59**. As a preliminary issue the further representations stated that the Respondent had failed to follow her own policy entitled: "Points-based system: evidential flexibility" last updated August 2014. The request for further information which would lead to the application being approved was mandatory yet all the Appellant had received were assertions that she did not meet the Rules. In **Mandalia** the Supreme Court had said that the process instruction obliged the Respondent first to have invited the Appellant to repair the deficit in the evidence in that case.
20. At paragraph 22 of his determination Judge Buckwell had stated that the Presenting Officer accepted that evidence in relation to funding concerns had been provided. I pause to note here that it is not entirely clear what the Judge meant by that paragraph. Did he mean that the Presenting Officer accepted that that was no longer an objection being made or merely that the Presenting Officer accepted that evidence had been presented in relation to funding concerns although funding concerns still remained?
21. The Appellant had adduced a reasonable explanation as to why she had received the amount paid to her by the estate agents. It was not an estate agent it was in fact a property developer. There was a letter from Forest Property Developments Limited dated 1st July 2014 signed by Mr Paramjit Singh Padda inviting the Appellant to find a corporate buyer for his development which consisted of 21 flats in Harrow which he wanted to sell for at least £4,000,000. If she were successful in finding a buyer he would pay her total commission on completion of £40,000 plus expenses. The Appellant was a genuine entrepreneur running a successful business.
22. In her second witness statement she stated that she had lost her father on 14th December 2014 but had been unable to return to Pakistan to attend the funeral due to the uncertainty over her immigration status. Her mother had recently been diagnosed with cancer, she had been unable because of the appeal to return to

provide support to her mother. All her money had been invested in AMS London Limited which was still trading. She attached a large number of medical reports and also a report of the directors and eighteen months audited management accounts for the period 1st May 2014 to 31st October 2015. This was not admissible as it was postdecision evidence but it indicated there were two directors, Mr Rasool and the Appellant and that there were two directors' loan accounts, one for Mr Rasool in the sum of £50,000 and the other for the Appellant for just under £75,000.

The Preliminary Issue

23. At the outset of the hearing before me Counsel for the Appellant indicated he relied on the principle of common law fairness as this was an unusual case. The Appellant had been deemed to be credible after interview, the Respondent had then carried out further investigations into the application but the concerns raised by those further investigations had not been put to the Appellant and thus she had not been given the opportunity to deal with them. Although the Appellant had been given the right of appeal against the Respondent's decision she was prohibited from relying on postdecision evidence. Had the Appellant's credibility been undermined in interview this would have been a weaker point but in the circumstances the Appellant had a right to claim that there had been procedural unfairness. On this basis the Respondent's decision was not in accordance with the law, the appeal should be allowed under Section 84(1)(e) of the Nationality, Immigration and Asylum Act 2002 and should remain outstanding for the Respondent to make a fresh decision.
24. There was a relevant policy in this case which had been cited in the supplementary bundle in the version valid from 12th August 2014. Before refusing the application the Respondent should have considered the policy giving the Appellant an opportunity to address evidence. The points taken against the Appellant were relatively trivial and she would have a lot to say about the Respondent's assertions if she was given the opportunity.
25. In response the Presenting Officer submitted that the case of **Ahmed [2014] UKUT 00365** was clear as to the approach which the Upper Tribunal had to take. The Upper Tribunal had stated that:

"Where a points-based application is made and refused the assessment by the Judge is to be of the material that was before the decision maker rather than a new consideration of new material. In other words the appeal if it is successful is on the basis that the decision maker with the material before him should have made a different decision, not on the basis that a different way of presenting the application would have produced a different decision."

The Oral Testimony

26. The Appellant adopted the two witness statements whose contents I have summarised above. There was no cross-examination. I asked the Appellant to clarify her role in relation to the sale of the flats. The Appellant stated that the developer was looking to sell off the whole development but he could not find

anyone. Estate agents were selling off individual flats she had no role in that. The developer was short on time, he had to return the bank's development loan and needed to sell off the whole block. She listed a number of potential corporate buyers but finally the Property Union bought the development.

Closing Submissions

27. In closing the Presenting Officer relied on the refusal letter and in particular the authority of Ahmed (see above). The appeal had to be determined on the basis of the material before the decision maker. Although the Appellant had been found to be credible in interview one had to take a holistic assessment of the evidence. There were a number of points where the evidence was vague, namely the reference to Pine Valley Limited payment said to be from AMS for a marketing campaign. Towards the end of the interview the Appellant had shown that she did not know much about this payment, thought it was a loan agreement. At that time the Appellant was a director. If the money had been diverted to another company she should have been able to provide a response. The response she did give did not tally with the Barclays Bank statement that the money was for a marketing campaign. Why would the Appellant have not known that? She should have known more details about it. Subsequent evidence about the loan agreement should not be admitted.
28. There was a letter of structure in the business plan submitted. It lacked statistical analysis and a real lack of information about the market, the product, or any form of financial review or market research conducted. Here was an individual who claimed to have extensive marketing qualifications but the business plan lacked forecasting decisions or strategy. The market was quite flooded already with such businesses. The contracts provided for Brian Thomas Estate Agents and the banqueting company were identical but there was a lack of specific details in both. They did not indicate what services the Appellant was said to be providing. The Appellant had not discharged the burden of proof.
29. In closing for the Appellant it was submitted that the Appellant had dealt with the various concerns of the Respondent in her statement. There had been no request from the Presenting Officer to resile from what was said to be a concession recorded at paragraph 22 of Judge Buckwell's determination (see paragraph 20 above). The Appellant had given credible evidence where the money she had invested had come from. I asked Counsel at this point to comment on the suggestion that his argument as to unfairness might be taken to mean that the Respondent could never write a refusal letter refusing a point-based system appeal unless and until the contents of the refusal letter had been put to the Appellant for the Appellant's comments. Counsel responded that this situation was different because here the Appellant had been interviewed and then further points had been taken against her which had not been put to her in interview. Under the common law duty of fairness a person should have the opportunity to address concerns in a fair manner.
30. One had to read the business plan as it was. This was not Price Waterhouse Coopers. Even if there was not enough detail that did not stop it from being a plausible

business plan. If the Respondent had wanted cash flow details she could have asked for that.

31. No evidence had been submitted by the Respondent as to the results of the yell.com search regarding the number of other companies in the area. The Appellant's own research suggested that there were 25 to 30 companies. It was not being alleged that the Appellant had provided forged documents. The Appellant wanted to provide more but she was not allowed to. She was paid a finder's fee and a percentage for locating a buyer for the development. The phrase estate agents should have been "property developers" which was a better description. It was said by the Respondent that the fee was too large but how much was too large? She had given evidence about this work today. A complaint was made about the contracts produced by the Appellant. The Respondent could have contacted those people but that was not done in this case.
32. At the present time the Appellant had a business which employed six people and had paid tax. The Respondent could check all of that with HMRC. The Respondent's complaints in the refusal letter were unfair and did not go to the heart of the matter. On the basis of the evidence before the Respondent the requirements of the Immigration Rules were met. The Appellant's case should not be dismissed because someone thought that the business plan should be a bit better. The Appellant was a plausible person managing a business. She had done her level best to address the concerns of the Respondent. She had made the point that in pursuing this appeal she had been unable to visit Pakistan despite her father's bereavement and now her mother's illness.
33. Where there was an appeal on human rights grounds postdecision evidence which was not admissible for points-based system appeals could be admitted. Following the recent Upper Tribunal decision of Mostafa, if an Appellant could show that she would have succeeded under the Rules that would be a relevant factor in determining Article 8. The Appellant had a private life in this country. She employed people here and there were benefits to the country. The fairness point interplayed with the proportionality exercise under Article 8. The appeal should be allowed.

Findings

34. The issue in this case is whether at the date of decision the Respondent had before her sufficient documentation which established that the Appellant could meet the requirements of the Tier 1 (Entrepreneur) Rules.
35. The Appellant had been interviewed by the Respondent and the interviewing officer had found the Appellant to be credible. As I indicated in my reasons for setting aside the decision at first instance, the difficulty with the interview was that the Appellant had made a number of assertions during the course of the interview which would have to be subsequently checked. What might therefore appear to be credible at that stage might on further perusal prove not to be credible at all. The interviewer's recommendation that the Appellant was credible did not therefore bind

the Respondent such that in effect that was the end of the application and a decision to allow the application inevitably followed.

36. In fact as was submitted to me there were a number of points in the interview where the Appellant was vague. The Respondent had a number of concerns even before the interview took place. The Respondent was particularly concerned as to why AMS London Limited were paying £20,000 for a marketing service when they had appointed the Appellant to do just that. The Appellant was vague in interview as to what this money was for suggesting that it was something to do with the other directors before her involvement. Subsequently the Appellant gave an account in her statement presented for the first instance proceedings that it was an investment in Pine Valley Limited which fell to be repaid at some point in the future. For whatever reason the interviewer did not ask the Appellant any questions about the other company to whom payments had been made namely TTM Polymer but that still left the concern about the Appellant's lack of knowledge about the payment of £20,000 to Pine Valley Limited.
37. The Appellant has argued that the Respondent's decision is procedurally unfair since matters have been taken against her which could or should have been raised in interview. In fact the issue of the £20,000 Pine Valley payment was raised in interview but the Appellant was not able to give an adequate answer. The clear conclusion to be drawn was that although the Appellant was registered as a director of AMS London Limited she evidently had a very incomplete grasp of the company's affairs. It was fully open to the Respondent to take that objection to this application and subsequent evidence setting out what the loan was about was inadmissible. The problem for the Appellant goes further than that, no good reason has been given as to why the Appellant should have subsequently acquired a more detailed knowledge of what this £20,000 was for than she had at the time that she was interviewed.
38. As part of her application (Appendix H to the Respondent's bundle) the Appellant produced a contract between the Appellant and Brian Thomas Estate Agents was dated 21st March 2014f that was to pay her just over £4,000. The contract does not specify what work she was to do for the estate agents referring instead in general terms such as discussing possible changes that needed to be made in terms of design, price, packaging, promotion etc. There was very little detail subsequently provided what that was for. The contract stated that the total agreed fees were £4,580.30 including disbursements payable in advance but made no mention of any percentage payments. Instead the Appellant has sought to rely on something completely different namely a contract with a developer to find a corporate buyer for a development of 21 flats in Harrow. There were two contracts in identical forms neither of which specified what work the Appellant was to do in practical terms and neither of which took the Appellant's application further. Post decision evidence from the developer was inadmissible.
39. The Respondent was concerned as to the provenance of the £75,000 paid into AMS London Limited's bank account by Bolzano Trading. To link the payment to the Appellant it was pointed out that the Appellant's name was on the advice of the

bank statement and that the Appellant's mother had made a statement saying that she had sent the money via Bolzano Trading. The Appellant's subsequent explanation was that Bolzano Trading was a money transfer company although no evidence was provided to the Respondent to establish that. Whilst the Appellant might complain that she was not asked specifically in interview about the details of the monies from her mother, she was evidently aware of the fact that she needed to explain why the money had come from Bolzano Trading since the Appellant's mother's statement had referred to her using this company as a means of transferring money. Beyond the Appellant's assertion and the statement from her mother there was no evidence to show who Bolzano Trading was. It was reasonable to have expected at least that to be dealt with at the time of application but it was not.

40. The Respondent was rightly concerned about the poor presentation of the business plan. This was in very generic terms, there were a number of spelling and grammatical mistakes, for example on page 1 'right' was spelt as 'write'. The Appellant's response in her statement was to give more generic remarks about her work rather than engage with the specific concerns of the Respondent. Thus while the Appellant argues that she was not given an opportunity prior to decision to deal with the Respondent's objections, her comments on the shortcomings of the business plan made in her statement show that even if given an opportunity in her appeal she did not take it. These failings are all the more acute since the Appellant has claimed that she was in a position to advise clients on marketing which would involve the composition of a business plan. That she could not do this for her own business has serious implications for her ability to do it for other businesses.
41. The Respondent was concerned that a large number of companies of a similar sort were already operating in the Ilford area. Mr Rasool the Appellant's fellow director had himself been granted leave as a Tier 1 Entrepreneur the year before the Appellant's application. Whilst it is arguable as to how many other companies there are operating in that part of East London even on the Appellant's own figures it was a substantial number. What the Respondent was concerned about was whether there was something which indicated that this particular business run by this particular Appellant was genuine and viable. The documentation supplied to the Respondent and the Appellant's answers in interview which were somewhat vague, led the Respondent to the view that this was not a genuine business application and no points were awarded a view with which I concur.
42. I do not accept the point made to me in argument that the actions of the Respondent were unfair in some way. As was said by the majority in the Court of Appeal in the case of **EK (Ivory Coast) [2014] EWCA Civ 1517** at paragraph 33 of **EK**: "The PBS places the onus of ensuring that an application is supported by evidence to meet the relevant test for grant of leave to enter or remain upon the applicant and the Immigration Rules give the applicants fair notice of this". Further at paragraph 29 the Court cited paragraph 45 of **Alam [2012] EWCA Civ 960** with approval: "The price of securing consistency and predictability is a lack of flexibility that may well result in "hard decisions" in individual cases but that is not a justification for imposing on [the Respondent] to conduct a preliminary check of all applications to

see whether they are accompanied by all of the specified documents, to contact applicants where that is not the case and to give them an opportunity to supply the missing documents. Imposing such an obligation would not only have significant resource implications, it would also extend the time taken by the decision making process, contrary to the policy underlying the introduction of the PBS”

43. It is not reasonable to suggest that there should be some lengthy process whereby the Respondent is unable to refuse an application without hearing from the Appellant before refusal. That would make the points-based system unduly protracted and for that reason the Court of Appeal have emphasised that the system despite what may be perceived to be imperfections needs to be of a relatively robust nature. It was for the Appellant to make her application in the correct form. It was for her to submit a proper business plan, it was for her to have some knowledge of the company’s affairs and so be able to understand why for example £20,000 had been paid to a particular company. It was for the Appellant to produce evidence in proper form of the activities she said she had performed for the company. She did not do this and the Respondent was fully entitled upon a careful consideration of the application form, the documents supplied and the interview to refuse the application for the reasons given which I have set out above.
44. It was not necessary for the Respondent to pursue the Appellant for further documents. The case of Mandalia is not of direct relevance in this situation. This was not a case where the Appellant had supplied documents but there were some missing from a sequence. This was a case where the Appellant had submitted documents which simply did not establish her claim. As the Court of Appeal pointed out in Rodriguez it was not incumbent upon the Respondent to assist the Appellant to perfect her application. The Appellant was not able to satisfy the requirements of Appendix A in relation to the Tier 1 (Entrepreneur) application under the points-based scheme and the Respondent was entitled to reject the application which she did. The Appellant’s appeal under the Immigration Rules therefore falls to be dismissed.
45. In relation to Article 8, the Appellant has only been in the United Kingdom a relatively short time during which her status here has been precarious. The Appellant has established a private life in this country since she appears to have done some work at least for Oracle Limited and that private life would be interfered with by requiring the Appellant to return to Pakistan. That interference would be in accordance with the legitimate aim of immigration control since the Appellant cannot meet the Immigration Rules. The interference would be proportionate since the weight to be attached to the Appellant’s private life established at a time when her status here was precarious is afforded little weight by reason of Section 117B of the 2002 Act.
46. There are no compelling reasons why the appeal should be allowed outside the Rules (it is not argued that the Appellant can bring herself within either Paragraph 276ADE of Appendix FM). She has no family life in this country. It is argued that the company the Appellant works for employs a number of people. That may well be so.

The issue is whether the Appellant could establish she was a genuine entrepreneur with a genuine controlling role in the company she had joined. This she could not do and it is difficult to see therefore what adverse impact the Appellant's removal to Pakistan would have on the remainder of the company. Article 8 would only come into play if as I have found the Appellant could not meet the Rules. If she had been able to meet the Rules the appeal would not have reached Article 8 considerations.

47. The Appellant also complains that due to the restrictions on her visa she was unable to return to Pakistan whilst this appeal was taking place. Had she done so she would have been deemed to have abandoned her appeal. Given that I find her appeal lacked merit, it was a matter for her if she nevertheless chose to remain in this country to pursue it. It cannot in those circumstances be a compelling reason to allow the appeal. I find that the Respondent's decision is proportionate to the legitimate aim pursued and I dismiss this appeal under Article 8.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and I have set it aside. I remake the decision by dismissing the Appellant's appeal.

Appellant's appeal dismissed.

I make no anonymity order as there is no public policy reason for so doing.

Signed this 6th day of January 2016

.....
Deputy Upper Tribunal Judge Woodcraft

TO THE RESPONDENT
FEE AWARD

As the appeal has been dismissed there can be no fee award payable.

Signed this 6th day of January 2016

.....
Deputy Upper Tribunal Judge Woodcraft



IAC-TH-LW-V1

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

Appeal Number: IA/30708/2014

THE IMMIGRATION ACTS

Heard at Field House
On 30th September 2015

Decision & Reasons Promulgated

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Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MISS ZAHRA SAEED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M. Saeed, Solicitor

For the Respondent: Mr L. Tarlow, Home Office Presenting Officer

REASONS FOR FINDING AN ERROR OF LAW

The Appellant

1. The Appellant is a citizen of Pakistan born on 7th October 1983. She appealed against a decision of the Respondent dated 25th July 2014 to refuse her application for further leave to remain in this country as a Tier 1 (Entrepreneur) Migrant under the points-based system. Her appeal was allowed by Judge of the First-tier Tribunal Buckwell sitting at Taylor House on 1st April 2015. The Respondent appeals against that

decision with leave. The Appellant was granted leave to enter this country on 21st March 2011 as a Tier 4 (General) Student. Her leave was extended in the capacity of a Tier 1 (Post-Study Work) Migrant on 6th June 2012 valid until 6th June 2014. She made her application for further leave as an individual investing at least £50,000 and switching from the post-study work route under Tier 1 on 23rd May 2014.

2. The Appellant stated that a total amount of £84,000 had been invested in her business AMS London Ltd between March and April 2014. She was a director with the job title of Marketing Consultant. One contract was supplied together with a letter from a UK regulated financial institution with whom a business bank account was held. Following an interview the assessing officer found the Appellant credible but the Respondent refused the application.
3. The Respondent was concerned at the source of the monies available for the business some said to come from the Appellant's mother as part of an inheritance. The money had been sent via Bolzano Trading but there was no evidence that her mother was connected to that company. There were concerns about monies which had been paid out from the bank account. £30,000 had been paid to a company called TTM Polymer and £20,000 to another company called Pine Valley Ltd said to be related to the recycling side of her business. A £20,000 loan was made by Faizal Mahmood who was not related to her. The Respondent expected the Appellant to know if £20,000 had been paid to another company in order to discharge a loan. Some money appeared to have been paid for a marketing campaign which was not found to be credible. Inadequate financial detail was contained in the Appellant's business plan and the claimed research undertaken by the Appellant was not evidenced. Internet searches revealed 151 companies in the vicinity of the area of operation of the Appellant and subsisting in the same field. The Appellant had thought there were less than 30. The sum payable by Brian Thomas Estate Agents Ltd, £4,583.30, under a marketing contract was considered to be too large an amount as was money paid by Saffron D'Or Banqueting. The Appellant had claimed to have worked as a Marketing Executive for two years with Atlas Bank, but such employment had not been substantiated. The Respondent awarded no points for attributes.
4. The Appellant told the judge in oral evidence that her marketing experience related well in selling a housing development of 21 flats. The agents had not themselves been getting appropriate responses but following her work the development was sold. She had been involved in the marketing. Annual profits of her business should exceed £70,000. Her solicitor (who also appeared before me) submitted that the Appellant had been found by the Home Office interviewer to be credible and there was a common law duty of fairness which should have been applied. The Appellant also maintained a claim in relation to Article 8.
5. At paragraphs 31 to 39 the judge set out his findings and reasons. The Appellant had not been subjected to lengthy cross-examination by the Presenting Officer and the conclusions reached by the interviewing officer confirmed the Appellant to have been assessed as credible at the interview stage. That had been the opportunity for the Respondent to raise all relevant concerns. The subsequent concerns in the refusal

letter were without justification. Funds were genuinely available to the Appellant. The Appellant had provided and confirmed during the appeal hearing significant extensive and adequate evidence in relation to her personal qualities and abilities. These included a strong record of employment with particular regard to marketing. All the financial evidence which the Appellant had brought had been appropriately evidenced and supported in documentation before the Tribunal. The judge found her to be an impressive witness. She was clearly an intelligent lady and had already been able to employ other individuals in her business. Article 8 factors favouring the Appellant outweighed those which might be said to favour the Respondent. The appeal was allowed under both paragraph 245DD and Article 8.

6. The Respondent appealed against this decision arguing that the judge had failed to give adequate reasons. It was necessary that key conflicts in the evidence were identified and resolved so the Respondent could understand why she had lost. This duty was not displaced by the opinion of someone who believed the Appellant was credible at the interview stage. The conclusions of the judge did not adequately address the particular points raised by the Respondent and this was a material error. Further, the judge's approach to Article 8 was flawed in that he had failed to take into account the Respondent's policy when considering the balance of interests under Article 8. There was an inadequate explanation as to why Article 8 was engaged.
7. The Respondent argued that there were two separate stages when considering the application. First the Appellant had had an interview followed by a summary of the interviewer's impression. The caseworker then put that together with the other documents to see whether the Rules were met. If one looked at paragraphs 33 and 34 of the determination the judge had said that the Appellant had clearly established in a careful presentation of her documentary evidence that the funds were available but the Respondent posed the question how had she done that? The Article 8 challenge was also maintained.
8. In reply the Appellant's solicitor argued that what had happened was in fact a three stage process not a two stage risk assessment. Not everyone was interviewed about their application for leave to remain as a Tier 1 (Entrepreneur). Thus the first stage was identifying from the application whether there were risks. At that point the interview occurred. During the interview which was quite lengthy the Appellant was asked questions after which the interviewer concluded that the Appellant was credible. Points were not awarded for funds because there was an issue as to the credibility and viability of the business. Doubts about the Appellant's business were discussed by Judge Buckwell and appeared in his determination.

Findings

9. The issue in this case is whether the judge has given inadequate reasons for his conclusions, such that the losing party cannot reasonably be expected to understand why they have lost. The Respondent must show that the complaint of inadequate reasons is more than a mere disagreement with the result dressed up as an argument that there has been an error of law. The Respondent wrote a detailed refusal letter on

25th July 2014 which set out in two closely typed pages the concerns she had about the Appellant's application following the interview. The judge was clearly influenced by the conclusion at the end of the interview that the interviewer's assessment was that the Appellant was credible.

10. As the recommendation itself makes clear that is not the final decision, the interviewer is only saying that the Appellant was credible at the interview stage. The Appellant's answers might be incorrect although appearing credible when given in interview. The Appellant had said there were only 25 to 30 companies operating in the area whereas in fact as the Respondent discovered following the interview that there were 151 companies offering marketing consultancy services in Ilford. The number of companies operating in the area might or might not be a significant factor. The important point is that the interview is not the end of the process whereby the Respondent assesses the application.
11. The judge himself came to a favourable view on the Appellant's credibility and felt that the Appellant had met the Respondent's objections. The difficulty was that paragraphs 33 and 34 which dealt with the specifics of the Respondent's objections were conspicuously brief and I have some sympathy with the Respondent's view that it was not possible to tell from those paragraphs why the judge felt that the Appellant had met the objections. He referred to a careful presentation of the documentary evidence but did not state how that documentary evidence met the very specific concerns which the Respondent had raised. The judge summarised the Appellant's evidence at paragraphs 17 to 19 of the determination, but did not cross-reference those paragraphs with the concerns of the Respondent, such that it was not possible to see how the Appellant's further evidence met the objections. The judge stated the Appellant had a strong record of employment with particular regard to marketing but did not explain why that dealt with concerns about inadequate financial detail in the business plan or why claimed research undertaken by the Appellant and the work experience itself was not evidenced. The Respondent was concerned that a contract with a firm of estate agents was considered to be too large an amount. The judge did not explain why he rejected that complaint. The Appellant had given evidence that she had helped estate agents to sell 21 flats, but the crucial point was why the estate agents should pay such a large amount of money when they were already selling what would be clearly desirable properties in London. The Appellant's answer in cross-examination that the agents had not themselves been getting appropriate responses was not evidenced. It was difficult to see why the judge should have accepted such an answer which given the present state of the property market in London appeared on the face of it to be somewhat implausible.
12. The judge gave inadequate reasons why the Appellant could meet the specific and detailed concerns of the Respondent as to the viability and credibility of the business she proposed to establish. The failure to give adequate reasons can amount to an error of law in the circumstances I have outlined above. I find that to be the case here. A far more detailed and forensic analysis of the evidence was required to indicate why this appeal should have been allowed or dismissed. A statement that

the Appellant was an impressive witness is not without more sufficient. Given that it could not be said on the basis of this determination that the Appellant met the Rules, any analysis of Article 8 would have to be predicated on the basis that the Appellant did not meet the Rules and this might lead to a different assessment of the proportionality exercise. I also set that aspect of the determination aside.

13. To assist the Tribunal on the rehearing of this case the Appellant should file and serve admissible evidence (bearing in mind the restrictions on post decision evidence in points based system appeals) dealing specifically with each and every one of the detailed complaints made in the refusal letter and that should be filed and served at least fourteen days before the renewed hearing. The judge declined to make a fee award in this case because the appeal had been allowed “on the basis of evidence additionally presented during the appeal stage”. It is difficult to see from the determination whether the judge permitted the Appellant to submit evidence which post-dated the decision and thus was not admissible. I do not consider that it is appropriate to remit this matter back to the First-tier to be heard again. A considerable quantity of evidence has already been provided and the issues can now be narrowed down to whether the Appellant can meet the specific objections in the refusal letter. It is not open to the Respondent to take any new objections. The Judge’s findings on credibility are not preserved.

Decision

The decision of the First-tier Tribunal involved the making of a material error of law and I have set it aside. The appeal remains to be substantively reheard at a later date.

I make no anonymity order as no order was made at first instance.

Signed this 4th day of November 2015

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Deputy Upper Tribunal Judge Woodcraft