



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/43202/2014
IA/43187/2014
IA/43206/2014
IA/43229/2014

THE IMMIGRATION ACTS

Heard at Field House
On 11 December 2015

Decision & Reasons Promulgated
On 6 January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

FARHEEN NAAZ
MOHAMED JAMEEL GHOURI
SIMRAN NAMEERA
MUSFERAH HANIN
(No anonymity order made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellants: Mr A. Chohan, Counsel instructed by Immigration Chambers
(Ilford)

For the Respondent: Mr S. Kola, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of India. The first and second appellants are married and the third and fourth appellants are their children. The second, third and fourth appellants are dependents of the first appellant, whose date of birth is 10 February 1978, and their immigration status depends on her. In this appeal I will refer to the first appellant as the appellant.
2. The appellant entered the UK as a Tier 4 General Student and was thereafter granted leave to remain as a Tier 1 Post Study Work Migrant until 17 August 2014.
3. On 12 June 2014 she took over and became the director of a company called 3D Accountax Ltd, which changed its name to Simhan Morden HR Consultant Ltd (hereinafter referred to as "the company").
4. On 16 August 2014 she applied for leave to remain as a Tier 1 (Entrepreneur) Migrant under the Points Based System.
5. This appeal arises from the respondent's decision, dated 15 October 2014, to refuse the appellant's application for leave to remain as a Tier 1 (Entrepreneur) Migrant and the decision of First-tier Tribunal ("FtT") Judge Grant, promulgated on 20 May 2015, to dismiss the appellant's appeal.

Relevant Immigration Rules

6. The Immigration Rules that are relevant to this appeal are set out in Appendix A and are: provision (d) in Table 4; the evidential requirements in Paragraph 41-SD(e); and Paragraph 46-SD (c) (iii).
7. Under provision (d) in Table 4 the appellant was required to show, inter alia, that from 11 July 2014 until the date of the application she was continuously engaged in business activity and registered with HMRC as self employed or with Companies House as a director of a new or existing business.
8. Under Paragraph 41-SD(e)(iii) the appellant was required to provide, in support of her application, for a period commencing before 11 July 2014 up to no earlier than three months before the date of the application, advertising material, including printouts of online advertising, that had been published locally or nationally, showing her name together with the business activity.
9. Under Paragraph 41-SD(e)(iv) the appellant was required to provide, for a period commencing before 11 July 2014 up to no earlier than three months before the date of the application, one or more contracts for service.
10. Under Paragraph 46SD(c) (iii) the appellant was required to provide documentation from HMRC confirming that her business was registered for corporation tax.

Decision of the respondent and the FtT

11. The respondent accepted that the requirements of (d) in Table 4 were met including that the appellant had been continuously engaged since 11 July 2014 in a

business of which she was registered as the director, but did not accept that the requirements of paragraphs 41-SD(e)(iii), 41-SD(e)(iv) or 46-SD(c) (iii) were satisfied and because of this rejected the application.

12. In respect of paragraph 41-SD(e)(iii), the respondent stated that the advertising material submitted by the appellant was from after 11 July 2014. In respect of 41-SD(e)(iv), the respondent's position was that the contract submitted by the appellant, although stated to be effective from 1 February 2014 (ie before 11 July 2014), was signed on 15 July 2014 (ie after 11 July 2014). With respect to the evidence of corporation tax required under paragraph 46-SD(c) (iii), the respondent stated that this was not submitted.
13. The appellant appealed and her appeal was heard by FtT Judge Grant. The FtT considered each of the three grounds upon which the respondent had refused the application and agreed with them for the reasons the respondent gave. With regard to evidence concerning registration for corporation tax, the judge stated that he did not believe the appellant's claim to have submitted a letter from HMRC with her unique tax reference number on it as he did not believe the respondent would overlook an HMRC document if it had been genuinely supplied.

Grounds of appeal

14. The grounds of appeal submit that the FtT erred because:
 - a. Sufficient advertising material had been submitted. The appellant had taken over an existing business and there was evidence of paying for ongoing material on 3 July 2014.
 - b. There was a continuous contract in place from before 11 July 2014 and the judge erred by treating the contract signed on 15 July 2014 as a new contract rather than an addendum to an existing contract to reflect only a change in name and addition of services.
 - c. There was no basis for stating that the appellant was being untruthful about submitting the HMRC document. There were no findings to question her credibility and it was more likely than not it was submitted with the application

Consideration

15. Paragraphs 41-SD and 46-SD of Appendix A to the Immigration Rules stipulate specified documents that must be submitted with an application. This appeal turns on three such categories of document that the respondent did not accept, but which the appellant contends, were properly submitted with the application. I will consider each in turn.

Advertising material under paragraph 41-SD(e)(iii)

16. Paragraph 41-SD(e)(iii) provides that:

'(e) If the applicant is applying under the provisions in (d) in Table 4, he must also provide one or more of the following specified documents covering (either together or individually) a continuous period commencing before 11 July 2014 up to no earlier than three months before the date of his application:

- (1) advertising or marketing material, including printouts of online advertising, that has been published locally or nationally, showing the applicant's name (and the name of the business if applicable) together with the business activity or, where his business is trading online, confirmation of his ownership of the domain name of the business's website,
- (2) article(s) or online links to article(s) in a newspaper or other publication showing the applicant's name (and the name of the business if applicable) together with the business activity,
- (3) information from a trade fair, at which the applicant has had a stand or given a presentation to market his business, showing the applicant's name (and the name of the business if applicable) together with the business activity, or
- (4) personal registration with a UK trade body linked to the applicant's occupation;'

17. Mr Chohan, for the appellant, argued that the material submitted by the appellant was sufficient to satisfy the requirement of this paragraph. At the error of law hearing Mr Chohan, at my request, took the tribunal through the material that had been submitted by the appellant to the respondent. The first document was an invoice for £650 dated 3 July 2014 for business cards, letterheads and flyers, website design, domain hosting and social media marketing. The second document was an undated copy of a business card. The third was an undated copy of a leaflet stating "proof" on it. The fourth document was a copy of a draft leaflet dated in the bottom right hand corner 2 July 2014.
18. It is clear that the FtT has taken the aforementioned evidence into consideration. At paragraph [7] it states that the appellant, in oral evidence, confirmed she received the final draft on 2 July 2014 of a brochure. This can only be a reference to the document Mr Chohan identified at the hearing. Whilst I accept that this brochure, if it were final, could constitute advertising material that satisfies Paragraph 41-SD(e)(iii), the evidence before the FtT was that this was only a draft brochure. Only on a strained interpretation of Paragraph 41-SD(e)(iii) could it be said that draft documentation satisfies the requirement and therefore I find it was open to the FtT to conclude that the appellant had not satisfied the requirements of the Rule.

The contract under paragraph 41-SD(e)(iv)

19. Paragraph 41-SD(e)(iv) provides that:

'If the applicant is applying under the provisions in (d) in Table 4, he must also provide one or more of the following documents showing trading, which must cover (either together or individually) a continuous period commencing before 11 July 2014 up to no earlier than three months before the date of his application:

(1) one or more contracts for service. If a contract is not an original the applicant must sign each page. Each contract must show:

- (a) the applicant's name and the name of the business,
- (b) the service provided by the applicant's business;
- (c) the name of the other party or parties involved in the contract and their contact details, including their full address, postal code and, where available, landline phone number and any email address; and
- (d) the duration of the contract;'

20. I accept Mr Chohan's argument that the FtT has erred in its interpretation of the contract but because of my findings in respect of the advertising material and HMRC documentation the error is not material.
21. The contract in question is between a third party and the appellant's company and was in existence, and covered a period, prior to 11 July 2014. The appellant, upon becoming director of the company - before 11 July 2014 - became responsible for the contract. Paragraph 41-SD(e)(iv) requires the appellant to submit a contract for service covering a continuous period commencing before 11 July 2014 up to no earlier than three months before the date of his application. The evidence demonstrates that she had done this and therefore the FtT erred (but not materially) in finding she had not.

Evidence of corporation tax required under paragraph 46-SD(c)(iii)

22. Paragraph 46-SD(c) (iii) provides:

'If the applicant is a director of a business, the business must be registered for corporation tax and the applicant must provide documentation from HM Revenue & Customs which confirms this.'

23. Mr Chohan argued that there was no basis for the FtT to find the appellant was not telling the truth about submitting a letter from the HMRC confirming the company was registered for corporation tax. The company was registered and there was no reason to doubt that she submitted the required information. If the respondent did not have the HMRC documentation amongst the papers the appellant submitted with her application it was not because the appellant failed to supply it.
24. Mr Kotas argued, in response, that the FtT was entitled to not believe the appellant. He drew my attention to the appellant's bundle before the FtT. In that bundle the documents relating to the company being registered with HMRC are


dated after the application was submitted to the respondent. Mr Kotas questioned why the appellant would not include in her bundle the letter from HMRC she purportedly submitted to the respondent. I put this to Mr Chohan and gave him an opportunity to locate the said document but he was unable to do so.

25. Having considered the submissions made by Mr Chohan and Mr Kotas, I am satisfied that the FtT did not make an error of law by finding that the appellant did not submit the evidence required under Paragraph 46-SD(c) (iii). In the refusal letter the respondent stated categorically that the appellant did not submit evidence of her business being registered. The appellant's response to this was to assert that she did. However, in the bundle submitted to the FtT the appellant included only a letter from HMRC dated 6 December 2014 and a letter dated 19 April 2015. Given that her application was made on 16 August 2014, it is clear that these are not the documents submitted with the application. I further note that the letter dated 6 December 2014 is a letter from HMRC that appears to be written in response to a question asking for confirmation of the company's tax reference number. If documentation from HMRC was submitted to the respondent on 16 August 2014 it raises the question as to why the appellant felt it necessary to request the information again such that she received a letter confirming her tax reference less than 4 months later. Given the absence of documentation to corroborate the appellant's account (i.e. a copy of what she claimed to have submitted to the respondent), it was open to the FtT to find that the appellant had not submitted the required document to the respondent.

Decision

26. For the aforementioned reasons I find that the decision of the First-tier Tribunal did not contain a material error of law and shall stand.
27. The appeal is dismissed.
28. No order for anonymity is made.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 30 December 2015