



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA433932014

THE IMMIGRATION ACTS

Heard at Field House
On 12 May 2016

Decision & Reasons Promulgated
On 26 May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

MISS NADIA KHAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Garrod of Counsel
For the Respondent: Mr Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan and her date of birth is 10 August 1980. She appealed against the decision of the respondent dated 13 October 2014 to refuse her

leave to remain in the United Kingdom and removal by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The First-tier Tribunal dismissed the appellant's appeal on 17 July 2015 and permission to appeal was initially refused by Judge Chohan on 11 March 2016 and subsequently granted by Andrew Grubb on 6 April 2016 stating it is arguable that the judge failed properly to apply paragraph 41-SD(e)(iv) which required only one specified document to be produced which was either a service contract or a bank statement but not both. He also stated that in considering paragraph 41-SD(e)(iii) but the judge only some of the advertising material submitted. The permission Judge went on to say that the appellant will have to satisfy the Upper Tribunal that what was produced does meet the requirements of the Rules.
3. First-tier Tribunal Judge Chohan gave the following reasons for dismissing the appellant's appeal which I summarise. He states that the burden of proving that the decision of the respondent was not in accordance with the law rests on the appellant. He states that the business plan submitted by the appellant is generic and lacking in figures and specific detail and the judge attaches very little weight to the same. The respondent noted that the appellant had failed to submit a bank statement in support of her application and the appellant in her grounds of appeal states she did not believe she needed to do so as she supplied other information and could have supplied a full picture. However, I note in her bundle she has produced an introductory letter from the bank rather than the bank statement and the letter does not contain her name and this damages her credibility and indicative of the fact that she is not actively trading.
4. The appellant submitted limited information to show that she was actually trading. She produced one advertisement from Gumtree and one advert from Scoot. Both adverts postdate 11th July 2014 and do not include the appellant's name in any event. The judge found that this evidence is insufficient to show that the appellant's business is actually trading. The judge further noted that most of the evidence the appellant has produced is dated between June and August 2014 and the fact that the appellant has failed to provide any evidence to indicate that she has continued to attempt to develop her business is indicative of the fact that the business is not actively trading. The appellant has produced one contract relating to services which are said to be produced to TNA Badminton.com Limited but the contract is small being £199 and there is no evidence that showed that these fees were said have related to services to be provided within 30 days of 4 July 2014 having been paid. In these circumstances little weight is attached to this evidence.
5. The judge went on to consider the other evidence produced by the appellant which are photocopies of leaflets and business cards. The judge found at paragraph 15 that on the totality of the evidence the appellant has failed to show that she fulfils the requirements of the Immigration Rules in respect of Tier 1 Entrepreneur Migrant scheme and that she has generated documentation purely in order to attempt to meet

the bare requirements of the scheme when she is not actively trading in her claimed business.

6. The judge found that

“The appellant has attempted to utilise the scheme as a means of taking disguised employment and I find it to be lacking in credibility. I find that the appellant does not meet the requirements of the Immigration Rules and that under the Immigration Rules appeal is bound to fail.”

7. The judge considered Article 8 but that was not part of the grounds of appeal. There is no challenge on that.

8. The grounds of appeal state that the judge has erred in law because the appellant is required to either provide business contact or an original bank account in order to demonstrate that the business was trading as mentioned. It is submitted that the Judge failed to appreciate in paragraph 11 of his decision that the appellant was meeting the requirements of trading by not only providing the trading contract dated 4 July 2014 which contained the duration of the contract as mentioned in the heading of the contract term and duration in contrast to the assertion made by the respondent but also she provided a letter from bank showed at pages 37 to 38 of the appellant's bundle and therefore she met all the requirements of the service contract. The appellant also provided a bank letter. There was no requirement that the bank letter should contain the name of the applicant and the only requirement being to provide contact with specified information or a letter from bank with specified information. The judge erred in law by expecting that the bank letter should have contained the name of the applicant. The judge found that the appellant has submitted limited information that she was actively trading despite the fact that she met the requirements by virtue of the Immigration Rules. She provided advertisement material in the form of extracts from Gumtree and Scoot advertisements. The judge has failed to consider all this material before coming to the decision. The judge has erred in law that the appellant has to provide only one or more of the documents.

9. At the hearing I heard submissions as to whether there is an error of law in the decision. Mr Garrod relied on the grounds of appeal and said that First-tier Tribunal Judge Chohan makes his findings at paragraphs 10 to 16 of his determination. He pointed out the appellant's bundle of documents from paragraph 40 to 44 the appellant provided her business plan which was vast so only a cover sheet was provided, extracts from the website, business cards and flyers and all of these documents complied with the requirements under paragraph 41-SD. He submitted that it is impossible to be able to provide the dates of when the advert was put in to the website but was there as of the date of application which is in fact the date. The judge misdirected himself because he failed to appreciate that the appellant only has to provide one or more documents and all the documents provided met the requirements of the Rules. There was no reason for the appellant to have provided both the bank statement and the bank letter. The respondent was obliged to clarify

with the appellant if she needed further documentation because the appellant has done all that she is able to do in providing the documents that she said she would.

10. Mr Avery on behalf of the respondent said that the appellant has to prove that she was actively and continuously trading before 11 July 2014 and all evidence has to be looked into in that context. He said that the advertisement from Scoot does not meet the requirements of the rules which must show that the appellant was continuously trading before 11 July 2014. The Gumtree advert equally does not show the date when it was submitted for publication. The contract of business does not show the duration and does not show all the dates as required. The important thing to show or demonstrate is compliance with the Immigration Rules which is to demonstrate continuous trade before 11 July 2014. This was not demonstrated with the contract which was 30 days before 11 July 2014. That is the fundamental issue which the judge took into account that he did not believe that the appellant had been trading, which he was entitled to do on the evidence.
11. Mr Garrod in reply said it is not easy to prove continuous trading and the appellant has given all the documents and obviously dates will not be on flyers or in business cards and adverts.

Findings as to Whether there is an Error of Law in the Decision

12. The judge found that the appellant does not meet the requirements of the Immigration Rules in that she has not demonstrated she has been trading before 4 July 2014 as required. The judge stated that the appellant has shown limited information to show she has been actively trading. The Rules are prescriptive and set out the kind of documentation which have to be provided. Paragraph SD clearly sets out the type of documents required. This is providing specified documents which demonstrate either together or individually, a continuous period of trading commencing 11 July 2014 up to no earlier than three months before the date of the application. Although the appellant has provided documents they do not meet the strict requirements of what information they must contain. The appellant provided adverts from scoot and Gumtree which is one of the required documents but there are no dates to demonstrate when they were submitted for publication. I do not accept that it is impossible to prove continuous trading for three months before 11 July 2014 from the date of the application but if they do not contain the relevant information the appellant cannot possibly have said to have met the requirements of the Immigration Rules. The First-tier Tribunal Judge found that this was not the case and was entitled to do so on the evidence.
13. The judge at paragraph 3 sets out all the evidence which demonstrates to me that he understood the nature of the evidence before him and was entitled to find that the appellant has not been trading in this country. After having considered all the evidence, the judge came to a sustainable finding on the evidence. I find that there is no error of law in the determination of the First-tier Tribunal Judge and I uphold the decision and I dismiss the appeal.

No anonymity direction is made.

Signed Mrs S Chana

Date this 25th day of May 2016

Deputy Upper Tribunal Judge Chana

TO THE RESPONDENT
FEE AWARD

No fee order.

Signed

Date this 25th day of May 2016

Deputy Upper Tribunal Judge Chana