



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/44115/2014
IA/44121/2014

THE IMMIGRATION ACTS

Heard at Field House
On 7th January 2016

Determination & Reasons Promulgated
On 12th February 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(1) MR SIRDHAR NEELA
(2) RAJITHA GUNDU
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr M Bhuiyan, Legal Representative
For the Respondent: Ms A Fijiwalia (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge James, promulgated on 22nd July 2015, following a hearing at Hatton Cross on 29th June 2015. In the determination, the judge allowed the appeal of Neela Sridhar and Rajitha Gundu, following which the Respondent, Secretary of State, applied for, and was granted permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The Appellants are husband and wife. They are both citizens of India. The First Appellant, the husband, was born on 2nd December 1975 and the Second Appellant, the wife, was born on 13th June 1980.
3. Their application was refused by the Respondent on the basis that the Respondent was not satisfied of the First Appellant's intention to set up a business and there was insufficient evidence of that business being in operation, the full reasons being set out in the refusal letter dated 22nd October 2014. It is important to note that the application was as a Tier 1 (Entrepreneur) Migrant.

The Appellant's Claim

4. The Appellant's claim is that the refusal letter of 21st October 2014 had accepted that the Appellant had invested £50,000 held in his business in the United Kingdom as specified under provision (d) in the first row of table 4 of Appendix A of the Immigration Rules.
5. The Appellant, according to the refusal letter, also had to satisfy the requirement under paragraph 41-SD(e) that the Appellant was in the occupation as part of his business, Neela Sridhar Business Limited, but this evidence, according to the refusal letter, was insufficient, and the advertising material was not acceptable because it did not cover a continuous period commencing before 11th July 2014, up to no earlier than three months before the date of the application.

The Judge's Findings

6. At the hearing before Judge James, it was apparently agreed by both representatives that the Secretary of State had applied the wrong legal provision. This is because paragraph 41-SD of Appendix A deals with available funds which are ready to invest, whereas paragraph 46-SD deals with funds which are already being invested. The Secretary of State in the refusal letter had already accepted that the money had been invested into the business (so that paragraph 46-SD would appear to have been complied with).
7. However, when the Secretary of State considered the application it was treated as if the funds were only available to invest, rather than having been already been invested, (in which case paragraph 41-SD applied). The application was refused simply because the Secretary of State had applied paragraph 41-SD. She ought to have applied paragraph 46-SD because it had already been accepted that the funds had been invested.
8. Before Judge James, both representatives agreed that there had been an error in the initial decision making process, so that the appropriate course of action was for the judge to remit the matter back to the Secretary of State so that the correct legal provision could be applied, namely, paragraph 46-SD.

9. However, in coming to her decision, the judge in the written determination made no reference to this and simply proceeded to allow the appeal, which is why now the Secretary of State was challenging the manner in which the appeal had been allowed outright.

Submissions

10. At the hearing before me on 7th January 2016, both parties once again agreed that the Secretary of State had applied the wrong legal provision, that the appropriate course of action was for the matter to return back to the Secretary of State so that the right legal provision could be applied, which would be paragraph 46-SD, given that the funds had already been invested into the business, and the judge had been wrong to overlook this consensus between the parties at the hearing before her on 29th June 2015.

Error of Law

11. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA [2007]) such that I should set aside the decision.
12. My reasons are those that both parties have agreed upon by way of submissions before me. I note from the skeleton argument of Mr Bhuiyan that he states (at paragraph 2.7) that,

“Once Judge James started the proceedings, she was respectfully made aware of the discussions and agreement between two advocates; hence the matter was resolved with a brief submission from both sides and the agreed to remit the matter back to the SSHD for making of a lawful decision.”
13. Secondly, it is clear that something has gone wrong in the very writing of the determination, in the way in which Judge James could simply not have intended, because the determination is incomplete.
14. There is a heading “findings of fact,” in which Judge James states that she has taken into account the documentary evidence and the submissions made in this appeal. She then goes on to say that, “thus in summary the Appellants” (see paragraph 7).
15. The judge no doubt intended to set down here what the submissions before her were, but for some reason the sentence is incomplete and there is no proper basis for the decision.
16. Third, and in any event, there is an error in allowing the appeal outright in the way that has happened in this case because plainly, the appropriate course of action was to remit the matter back to the Secretary of State for the correct application of the law.
17. For all these reasons, the only course of action here is that the matter should return back to the Secretary of State for a decision that is correct in law.

Re-Making the Decision

18. I have re-made the decision on the basis of the findings of the original judge, the evidence before her, and the submissions that I have heard today. I am allowing this appeal to the extent that it is remitted back to the Secretary of State for a fresh decision, on the basis of the correct legal provision, given that the Secretary of State has accepted that the funds were invested in the business named Neela Sridhar Business Limited.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I re-make the decision as follows. This appeal is allowed to the extent that it is remitted back to the Secretary of State for a fresh decision.

No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

10th February 2016