



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

Appeal Numbers: IA/44712/2014
IA/44713/2014
IA/45092/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 1 February 2016**

**Decision & Reasons Promulgated
On 17 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**BASIT QAMAR
AMNA BASIT
YASIR RAHIM
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Kalim, Counsel, instructed by Rainbow Solicitors
For the Respondent: Ms S Sreeraman, Senior Home Officer Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge Kelly (the judge), promulgated on 5 June 2015, in which he dismissed the Appellants' appeals. These appeals had been against the Respondent's decision of 23 October 2014, refusing to vary leave to

remain and to remove the Appellants from the United Kingdom under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The first and second Appellants are husband and wife: the latter's case is dependent upon that of the former. The third Appellant is the business partner of the first. On 5 August 2014 the two principle Appellants (the Appellants) sought an extension of leave as Tier 1 Entrepreneurs. In refusing the applications the Respondent awarded points under Appendices A, B and C to the Immigration Rules (the Rules), but concluded that the Appellants were not genuine entrepreneurs. She relied on paragraph 245DD(h) of the Rules. In particular, emphasis was placed upon the following matters: the contract provided; the website; market research; the business plan; the business stationary; and the previous educational and business experience.

The judge's decision

3. The judge set out the relevant provisions of the Rules, a summary of the Appellants' case, the Respondent's position, and the evidence before him. Of relevance is the fact that the Appellants gave oral evidence at the hearing. This is summarised at paragraphs 20-26.
4. The findings and conclusions in relation to the appeals under the Rules are set out in paragraphs 31-40. Article 8 is dealt with briefly at paragraph 41.
5. In deciding against the Appellants the judge went through the matters raised by the Respondent in her reasons for refusal letter. His conclusions on these points were in line with the Respondent's view. In summary, the judge found the following:
 - a) The documentary evidence was "vague and lacking in credibility";
 - b) The business plan was poorly written, ill-thought through and implausible;
 - c) The business cards contained spelling errors;
 - d) The contract contained errors, was vague in its content, and generally of poor quality;
 - e) The market research was lacking in detail;
 - f) There was a lack of knowledge about relevant software;
 - g) There was no real educational or business experience.
6. In addition, the oral evidence from the Appellants clearly did not help their cause (see paragraph 32).

The grounds of appeal and grant of permission

7. The grounds assert that the judge erred in hearing oral evidence from the Appellants. This was contrary to the decision in Ahmed (PBS: admissible evidence) [2014] UKUT 00365 (IAC). It is also said that the judge failed to give adequate reasons, went behind the Respondent's positive view of

documentary evidence, failed to put concerns to the Appellants at the hearing, raised new issues, failed to have regard to all relevant evidence, and failed to deal properly with the Article 8 claim.

8. Permission to appeal was granted by First-tier Tribunal Judge Simpson on 25 September 2015. The grant was effectively on the basis of the Ahmed point.

The hearing before me

9. In response to a query from me that perhaps Ahmed did not apply where paragraph 245DD(k) of the Rules was not also relied upon by the Respondent, both representatives contended that it this decision did apply.
10. Mr Kalim relied on the grounds. He submitted that the judge should not have taken any oral evidence into account. The oral evidence was relied upon and so the decision was flawed.
11. Ms Sreeraman submitted that the oral evidence made no difference to the outcome. The judge had in fact substantially based his findings and conclusions on the evidence submitted with the applications.

Decision on error of law

12. I accept for the purposes of my decision that Ahmed did apply to the appeal before the judge. Although I have some further reservations as to the existence of an absolute bar to taking any oral evidence in PBS cases concerning paragraph 245DD(h) of the Rules, I am also prepared to accept that as a result of Ahmed the judge was precluded from hearing such evidence.
13. Therefore the judge erred.
14. However, it is clear to me that this error was not material to the outcome of the appeals.
15. The judge has carefully proceeded through the very same matters as raised in the reasons for refusal letter. Nothing new or unexpected is brought up. It is readily apparent from a proper reading of paragraphs 31-39 that the judge has based his findings and conclusions almost entirely upon the very same evidence as was submitted with the applications and considered by the Respondent. The oral evidence that he erroneously heard only compounded the significant problems the judge found existed within the original evidence. The findings made in respect of the business plan, the contract, the market research, the stationary, the lack of relevant experience, and the website were all entirely open to the judge: the oral evidence made little or no difference to any of them.

16. In light of the sustainable findings, the judge was always going to reach the equally sustainable conclusion that the Appellants had not shown themselves to be genuine entrepreneurs.
17. Aside from the Ahmed point, the rest of the grounds are entirely misconceived. Indeed, the points raised at paragraphs 5 and 6 are very close to being disingenuous. In respect of a failure to take account of relevant evidence, I have been referred to nothing in the papers indicating what this evidence might have been and how it might have affected the outcome. The Article 8 claim was almost bound to fail, and the judge's brevity in dealing with this issue was permissible.
18. For the sake of completeness, there is nothing inconsistent in the Respondent awarding points under Appendix A and refusing the applications under paragraph 245DD(h). The latter provision, whilst related to the acquisition of points (at least notionally) is clearly separate from paragraph 245DD(k) (which is directly linked to points) and Appendix A. It does not follow that an award of points under Appendix A must preclude reliance upon paragraph 245DD(h), or vice versa. Reference to paragraph 245DD(k) at one point in the reasons for refusal letter does not undermine either the lawfulness of the Respondent's original decision or that of the judge.
19. The Appellants' appeals are all dismissed.

Anonymity

20. No direction has been sought and none is appropriate.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

The decision of the First-tier Tribunal stands.

Signed

Date: 12 February 2016

H B Norton-Taylor
Deputy Judge of the Upper Tribunal

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

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Signed

Date: 12 February 2016

Judge H B Norton-Taylor
Deputy Judge of the Upper Tribunal