



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/44914/2014**

**Appeal Numbers:**

**IA/44919/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated  
On 20 May 2016**

**On 4 May 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**MS IDAYAT BUSAYO DAMILOLA ADEBAYO (FIRST APPELLANT)  
MR ABIODUN ADEWALE FAKOYA (SECOND APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Ms S Pinder, Counsel, instructed by Paul John and Co  
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is an appeal by the two Appellants against the decision of First-tier Tribunal Judge Bart-Stewart (the judge), promulgated on 16 September 2015, in which she dismissed their appeals on all grounds. The appeals to the First-tier Tribunal had been against the Respondent's decision of 20 October 2014, refusing to vary the Appellants' leave to remain and to

remove them from the United Kingdom by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. On 11 April 2014 the first Appellant had applied to the Respondent for further leave to remain as a Tier 1 (Entrepreneur). The second Appellant has always been her dependant. The applications were refused on two grounds: first, that no contract for services had been provided with the application; second, that there had been no Current Appointment Report provided in respect of the first Appellant's directorship of her company. As a result of these omissions the Respondent did not award points under Appendix A to the Immigration Rules and the applications were therefore refused.

### **The judge's decision**

3. The judge was not satisfied that a contract for services had in fact been provided by the first Appellant (see paragraph 14 of her decision). In addition, the judge found that the Appellant had not provided a Current Appointment Report either (see paragraph 15). The judge notes that the Current Appointment Report was a specified document, required under paragraph 41-SD(e)(v) of Appendix A, and that a failure to provide it meant that the appeals were bound to fail. Finally the judge went on and considered the Article 8 claim, such as it was, and rejected it.

### **The grounds of appeal and grant of permission**

4. There are two grounds of appeal in respect of the judge's decision. The first relates to an issue of alleged unfairness. It is said that evidence provided by the first Appellant to the Respondent had not been included in the latter's appeal bundle, that there had been no Presenting Officer at the First-tier Tribunal hearing, and therefore it had been impossible for the first Appellant to show that she had in fact provided the contract for services as she has claimed throughout. The second ground alleges that although a Current Appointment Report had not in fact been provided, the Respondent had a discretion under paragraph 245AA of the Rules to seek further evidence from the first Appellant or to grant the application exceptionally. There is no challenge to the Article 8 conclusions.
5. Permission to appeal was refused by the First-tier Tribunal, but granted by Upper Tribunal Judge Kebede on 30 March 2016. Whilst some merit was seen in the first ground, less was present in the second. The grant of permission was not, however, limited.

### **The hearing before me**

6. Ms Pinder submitted that a contract of services had in fact been provided with the application. In respect of the Current Appointment Report, she accepted that none had in fact been provided. However, she pointed to page 28 of the Appellants' bundle and to a letter dated 14 March 2014 from Companies House, which confirms that the first Appellant had been appointed as a director. Ms Pinder's submission was that this letter

provided the same information as would have been contained within a Current Appointment Report and thus it could properly be said that the letter in question was not in the correct format, thus engaging the potential exercise of discretion under paragraph 245AA(b)(ii) of the Rules.

7. Mr Bramble submitted that the Current Appointment Report was a mandatory item of evidence (a “specified document”) under paragraph 41-SD(e)(vi) of Appendix A to the Rules. Given that it was accepted that no such document had been provided, the judge was bound to reject the appeals under the Rules. In respect of the exercise of discretion under paragraph 245AA, this could not assist the first Appellant. First, because the letter provided from Companies House was a different type of document and could not be said to be a document in the “wrong format”. Second, that where a specified document is not provided by an applicant the Respondent will not request its production, with reference to paragraph 245AA(c). Third, that the exercise of discretion is precluded by operation of paragraph 245AA(d) where a specified document has not been provided.

### **Decision on error of law**

8. I find that there are no material errors of law in the judge’s decision and that she was entitled to find as she did in respect of the Current Appointment Report.
9. Dealing with the issue of the contract of services first, I am willing to assume for the purposes of this appeal that such a contract of services was in fact provided by the first applicant with her application. So in that respect the judge (on the assumption that I am making) erred in the first of her reasons for dismissing the appeal.
10. However, the judge was fully entitled to conclude that there was simply no Current Appointment Report provided by the first Appellant at any time. Ms Pinder accepts this to be the case. Thus, the Respondent was correct in awarding no points under Appendix A, and the judge was correct in dismissing the appeal on this basis.
11. Turning next to the issue of evidential flexibility and fairness. Having looked at the papers on file it appears to me as though the paragraph 245AA issue was not even raised before the judge. As much is conceded by Ms Pinder in her grounds of appeal (she did not appear before the First-tier Tribunal). If the contention that the Companies House letter could be said to trigger the application of paragraph 245AA was not even put to the judge, it is very difficult to see she can be criticised for failing to deal with it, or that it was somehow “an obvious point”, as suggested in the grounds. In my view, the judge is not to be faulted, nor was the issue an obvious one.
12. In any event, I will adopt a ‘belt and braces’ approach and consider the argument on its merits. The Current Appointment Report is indeed a “specified document” within the meaning of paragraph 41-SD(e)(v) of

Appendix A to the Rules. It is clearly a particular type of document. The letter from Companies House at page 28 of the Appellants' bundle is a different type of document. Whilst it does state that the first Appellant had been appointed as a director, it simply cannot properly be said that it was the relevant "specified document", albeit in the "wrong format": it was simply not the relevant specified document at all. Therefore paragraph 245AA(b) could not assist the Appellant in this case.

13. I note also that in respect of paragraph 245AA(c), the Rules make it very clear that the Respondent will not request further information from an applicant where a "specified document" has not been submitted. As a Current Appointment Report had not been submitted, there was no scope for success here either.
14. Finally, paragraph 245AA(d) represents another insurmountable obstacle because of the failure to have submitted a "specified document".
15. The question of whether any policy might have assisted the first Appellant has never been raised (neither in the grounds to the First-tier Tribunal against the Respondent's original decision, at the hearing before the judge, in the grounds for permission to appeal, nor before me). Any such issue is not before me.
16. In light of the foregoing, the first Appellant's appeal was quite properly dismissed by the judge in respect of the Rules. There is no issue in respect of the lawfulness of the Respondent's decision as regards the exercise of discretion under paragraph 245AA and there has been no challenge to the judge's conclusions on Article 8. The second Appellant's appeal falls with that of his wife.
17. Therefore the judge's decision stands.

### **Decision**

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

**The Appellants' appeals to the Upper Tribunal are dismissed and decision of the First-tier Tribunal stands.**

**No anonymity direction is made.**

Signed

Date: 17 May 2016

Deputy Upper Tribunal Judge Norton-Taylor

**TO THE RESPONDENT**

**FEE AWARD**

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

Signed

Date: 17 May 2016

Deputy Upper Tribunal Judge Norton-Taylor