



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: IA/45555/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 29 February 2016**

**Decision and Reasons Promulgated
On 9 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

SHEERAZ HUSSAIN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Waheed of Counsel

For the Respondent: Mr Jarvis a Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Respondent refused the Appellant's application for leave to remain as a Tier 1 (Entrepreneur) Migrant on 24 October 2014. He is a citizen of Pakistan who was born on 13 February 1985 (now aged 31). He was required to leave the United Kingdom.
2. His appeal was dismissed by First-tier Tribunal Judge Khawar ("the Judge") following a hearing on 10 July 2015.

The grant of permission

3. Upper Tribunal Judge Rintoul granted permission to appeal (20 January 2016) on the ground that it is or may be arguable that the Judge erred when stating “that there was no evidence that the accounts had been sent” given the contents of the letter of 1 September 2014 from the Appellant’s solicitor.
4. Both representatives told me there was no need for me to determine whether the Judge misunderstood the evidence as to whether the Appellant is a signatory to the account, or what the precise meaning of the wording of paragraphs 46-SD (c) (ii)(2) of Appendix A of the Statement of Changes in Immigration Rules HC 395 (“the rules”) meant as Mr Jarvis conceded that the Appellant was indeed a signatory to the account.

Respondent’s position

5. The Judge directed himself appropriately. The grounds appear to be just a disagreement with the Judges decision. The documents produced are not audited or unaudited accounts.

Appellant’s position

6. The report from Pinders and Operations Report when combined amount to unaudited accounts. The Respondent should produce the abbreviated accounts and financial statements produced with the application.

Judge’s Determination

7. It is found in the determination that [12] the Operations Report,

“cannot possibly be viewed as an equivalent to either Audited or Unaudited Accounts because there is no evidence contained within those reports to suggest that all of the expenses of running this business is recorded therein - an obvious example being that salaries of employees appear not to be included in these OPS Reports. Further and in any event it is inappropriate for an Appellant to seek to provide alternatives to either audited or unaudited accounts and thereby require the Respondent to effectively act as an accountant or indeed, in this appeal to expect the Tribunal to act as an accountant.”
8. He further said at [13],

“I also note from the aforementioned Business Appraisal and Valuation Report prepared by Pinders that they make reference to accounts for the year end 2012 and year end 2013. Consequently such accounts in relation to this business must have been in existence and available for examination. No adequate explanation has been provided by the Appellant as to why such accounts could not have been forwarded to the Respondent...”

9. He accordingly found at [14],

“...the Appellant did not satisfy the requirements of paragraph 46-SD because he failed to supply audited accounts or unaudited accounts with an Accounts Compilation Report showing the amount invested and there were no accounts showing his investment in the form of a Directors loan.”

Discussion

10. It states in the part of Appendix A of the rules that is relevant for this appeal that (my underlining);

“46-SD. The specified documents in paragraphs 41(b) and 46 are as follows:

(a) The applicant must provide all the appropriate specified documents needed to establish the amount of money he has invested from the following list:

(i) If the applicant’s business is a registered company that is required to produce audited accounts, the audited accounts must be provided;

(ii) If the applicant’s business is not required to produce audited accounts, unaudited accounts and an accounts compilation report must be provided from an accountant who is a member of a UK Recognised Supervisory Body (as defined in the Companies Act 2006);

(iii, iv) n/a

(b) Audited or unaudited accounts must show the investment in money made directly by the applicant, in his own name or on his behalf (and showing his name). ...

11. The letter of 1 September 2014 from the Appellant’s Solicitor states that the documents in support of the application include;

- (1) Business Bank Statements issued by Barclays Bank,
- (2) Abbreviated accounts and financial statements,
- (3) Copy of VAT returns, and
- (4) Letter from Basilico in favour of the Appellant.

12. I note from the record of proceedings that it was submitted before the Judge that the Operations Report was equivalent to accounts or unaudited accounts when combined with the accounts analysis business appraisal and valuation report prepared by Pinders. All of these documents were in the Judge’s bundle. I note that the Operations Report is a single sheet of financial information that does not state it has been prepared by an accountant who is a member of a UK Recognised Supervisory Body. I note that on the report prepared by Pinders it states that they are members of the RICS – the Royal Institute of Chartered Surveyors.

13. Nowhere in the letter from the Appellant's Solicitor to the Respondent or in the Appellant's bundle before the Judge were there audited accounts, or unaudited accounts and an accounts compilation report provided from an accountant who is a member of a UK Recognised Supervisory Body. I am not satisfied that "Abbreviated accounts and financial statements" amount either to audited accounts or unaudited accounts and an accounts compilation report as there was no evidence before the Judge that they are the same thing. I am satisfied that the terms "audited accounts", "unaudited accounts", and "accounts complication report" have particular accounting meanings as otherwise anything could be produced with no indication as to the qualification of the person preparing them. I am not satisfied that they are covered by the phrase "abbreviated accounts and financial statements" as it is unclear who prepared those documents or what they mean. Nor am I satisfied that the Operations Report is equivalent to accounts or unaudited accounts when combined with the accounts analysis business appraisal and valuation report prepared by Pinders as there is no evidence that either report has been prepared by an accountant who is a member of a UK Recognised Supervisory Body. Indeed it is unlikely that if there were accounts or unaudited accounts in existence on 1 September 2014 that copies of those could not have been obtained from the accountant who prepared them or that the Appellant would not have retained a copy and been able to subsequently produce it.
14. The Judge was therefore entitled to find as he did regarding the documents produced.
15. There was therefore no material error of law by the Judge as mandatory documents required to be filed with the application had not been, and had still not been produced to the Judge and have still not been produced.

Decision:

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

I do not set aside the decision.

Signed:
Deputy Upper Tribunal Judge Saffer
2 March 2016